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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

20 CR 330 (AJN)

6 GHISLAINE MAXWELL,

7 Defendant.

Jury Trial

8 -----x

9 New York, N.Y.
10 December 18, 2021
11 9:10 a.m.

12 Before:

13 HON. ALISON J. NATHAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
18 Southern District of New York

19 BY: MAURENE COMEY

20 LARA POMERANTZ

21 ANDREW ROHRBACH

22 Assistant United States Attorneys

23 HADDON MORGAN AND FOREMAN

24 Attorneys for Defendant

25 BY: JEFFREY S. PAGLIUCA

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-and-

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-and-

COHEN & GRESSER

BY: CHRISTIAN R. EVERDELL

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1 (In open court; jury not present)

2 THE COURT: Good morning, everyone.

3 ALL COUNSEL: Good morning.

4 THE COURT: Please be seated.

5 All right. Looks like we have everybody. Let me just
6 make sure we're set up.

7 Okay. Thank you, everyone, for the Saturday charging
8 conference, a first for me, but it helps us use our time well,
9 I think, so thank you for that.

10 I circulated to the parties the draft charge, which we
11 docketed last night. In the draft verdict form, the way I do
12 this is to just ask, starting with the first page on which you
13 have a request that you want to make, and give me the page and
14 line number and we'll discuss it. If I accept the change, it
15 will be entered in redline by my law clerk. And then once
16 we're finished, I'll send to the parties the redline so you can
17 help me make sure that everything got entered properly.

18 All right. So Mr. Rohrbach, first page that you have.

19 MR. ROHRBACH: The government's first request is on
20 page 32.

21 THE COURT: Before that? Mr. Everdell?

22 MR. EVERDELL: Yes, your Honor. Defense's first
23 request --

24 THE COURT: It may be best to -- you're welcome to
25 remain seated --

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1 MR. EVERDELL: I can pull this up a little bit?

2 THE COURT: -- if I'm going to hear from you a lot.

3 But yes, pull up the mic and -- yes. First page, Mr. Everdell.

4 MR. EVERDELL: Defense's first page is page 15.

5 THE COURT: Okay. Line?

6 MR. EVERDELL: Well, we'll start with line 8 and 9.

7 THE COURT: Okay.

8 MR. EVERDELL: So this was the summary of the
9 indictment charge, your Honor.

10 THE COURT: Yes.

11 MR. EVERDELL: And on 8 and 9, there's a reference to
12 travel to both interstate and foreign commerce. I think
13 throughout the charge there's a bit of an inconsistency.
14 Sometimes we're talking about just interstate, sometimes we're
15 talking about interstate and foreign. I actually don't think
16 that there's any evidence, especially with respect to Count One
17 or the Mann Act charges or any of them, we're talking about
18 "and foreign commerce." I think it's interstate commerce, so I
19 don't think the "and foreign" is necessary.

20 THE COURT: I think we have -- Mr. Rohrbach?

21 MR. ROHRBACH: Your Honor, this actually relates to
22 the government's later request, but the government's view is
23 that there are flight records that show Virginia Roberts
24 traveling with the defendant and Jeffrey Epstein overseas while
25 she is 17, I believe, and so that would be sufficient, at least

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1 as to Counts Five and Six.

2 THE COURT: So the government's request is that I
3 include "foreign" in each instance and the defense's request
4 that I remove "foreign" in each instance. As we stand, there's
5 inconsistency. Do I have that right, Mr. Everdell?

6 MR. EVERDELL: I'm sorry, your Honor. Can you say
7 that again?

8 THE COURT: Sure. Right now there's inconsistency as
9 to whether "foreign commerce" is included or not, and the
10 defense's request is that "foreign" be excluded in each
11 instance and the government's request is that "foreign" be
12 included in each instance.

13 MR. EVERDELL: That's correct, your Honor.

14 THE COURT: Okay. Mr. Everdell, do you want to
15 respond to the government's point about flight records.

16 MR. EVERDELL: Your Honor, the flight records, I
17 think -- I'm trying to think of the references to -- you said
18 it relates to which individual? I'm sorry, your Honor.

19 MR. ROHRBACH: It relates to Virginia Roberts while
20 she was 17, and so that, at a minimum, in the government's
21 view, means "foreign commerce" should be included in Counts
22 Five and Six.

23 MR. EVERDELL: Your Honor, there's no testimony about
24 the purpose of those trips or any enticement with respect to
25 those trips. I think Virginia Roberts, the sum total of her

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1 testimony was that she recruited Carolyn, and she didn't
2 testify, and I don't think -- this is not the theory that the
3 government's been proceeding on on these counts. These counts
4 relate to the four accusers that testified. I think for the
5 jury to infer then that there's enticement with respect to
6 Virginia Roberts, when there's no evidence in the record of
7 Ms. Maxwell or anybody enticing her, there's just testimony
8 that she enticed Carolyn, if anything, that's not an
9 appropriate theory for the jury to base their conviction on
10 foreign commerce, if she's the one who traveled.

11 MR. ROHRBACH: If I may, your Honor. I think for
12 counts --

13 THE COURT: We're talking 18 U.S.C. 1591, correct?

14 MR. ROHRBACH: Yes. The government does not -- if the
15 Court and defense prefer to remove "foreign commerce" from One
16 through Four, Virginia Roberts's conduct doesn't show that.
17 While that's a legally proper instruction to leave "foreign
18 commerce," it's at least available to the jury as to Counts
19 Five and Six because of 18 U.S.C. 1591).

20 THE COURT: But the text of 18 U.S.C. 1591 doesn't
21 include "in foreign commerce," does it?

22 MR. ROHRBACH: Yes. It says, "Whoever knowingly, in
23 or affecting interstate or foreign commerce, recruits, entices,
24 harbors," etc.

25 Oh, I see. It appears that --

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1 THE COURT: There is a --

2 MR. ROHRBACH: -- there was a statutory change that
3 added "foreign commerce."

4 MR. EVERDELL: Yeah.

5 THE COURT: It depends on what the operative time
6 period for the inclusion of it is.

7 MR. ROHRBACH: In light of that, your Honor, I think
8 the government would withdraw its request as to Counts Five and
9 Six.

10 THE COURT: Okay.

11 MR. ROHRBACH: To avoid any ambiguity about that
12 point.

13 THE COURT: Okay. All right. So you'll help me,
14 Mr. Everdell, find each instance in which we need to remove
15 "and foreign"?

16 MR. EVERDELL: Yes, your Honor.

17 THE COURT: The first one you've identified --

18 MR. EVERDELL: If you like, on this charge, I can go
19 through the ones I see on this page.

20 THE COURT: Let me just note the first one we've
21 discussed, because my clerk is going to wait for me to say the
22 change in order to make it. So let me just note on page 15,
23 lines 8 and 9 -- on line 8, deleting the word "and," on line 9,
24 deleting the word "foreign."

25 Next one, Mr. Everdell?

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1 MR. EVERDELL: Line 12, your Honor.

2 THE COURT: Line 12, deleting the word "and," deleting
3 the words "and foreign"? Go ahead, Mr. Everdell.

4 MR. EVERDELL: Line 15, same change, your Honor.

5 THE COURT: Line 15, deleting "and foreign."

6 MR. EVERDELL: Yes, your Honor.

7 THE COURT: And line 19?

8 MR. EVERDELL: Correct, your Honor.

9 THE COURT: Deleting "and foreign."

10 That's it for that, for the summary, correct?

11 MR. EVERDELL: That's it for the "and foreign," yup.

12 THE COURT: Okay.

13 MR. EVERDELL: We have a few others.

14 THE COURT: All right. Well, let's be comprehensive
15 on this. Are there any other places in the charge where that
16 appears?

17 MR. EVERDELL: Oh, the other places in the whole
18 charge.

19 THE COURT: Actually, we'll hit it when we get there.
20 So what else on 15?

21 MR. EVERDELL: Sure. So line 10, your Honor --

22 THE COURT: Okay. Just one second.

23 MR. EVERDELL: Okay.

24 THE COURT: Go ahead.

25 MR. EVERDELL: Thank you, your Honor. On line 10, it

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1 now reads, "Count One relates to multiple alleged victims in
2 the time period 1994 into 2004." We believe it should read,
3 "Count One relates solely to Jane and the time period 1994 to
4 2004." And I can explain, if you like, your Honor.

5 THE COURT: Let me just get my eyes on it.

6 Okay.

7 MR. EVERDELL: So, your Honor, this is an issue I
8 think we've gone back and forth on quite a bit in the motions
9 *in limine*. But with respect to the government's theory of the
10 conspiracy and of the substantive counts, enticement and
11 transportation, so Counts One through Four, is that the
12 underlying object was a violation of New York law, right,
13 Section 130.55. So there has to be -- the object of this
14 conspiracy is a violation of New York law. With respect to
15 Kate, there was no violation of New York law. Your Honor
16 already instructed the jury that they can't consider that
17 evidence for purposes of conviction because she was above the
18 age of consent. There was no violation of New York law. Same
19 thing with --

20 THE COURT: Well, just to be slightly more precise,
21 they can't convict on that count based solely on the evidence
22 of the conduct involving her.

23 MR. EVERDELL: Correct. And with respect to Annie,
24 the Court also instructed that this is -- whatever conduct they
25 may find that she talked about in New Mexico, was not illegal

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1 sexual activity as charged in the indictment, which is a
2 reference to the violation of New York law, because that is the
3 theory we're proceeding under.

4 With respect to Carolyn, there was no limiting
5 instruction, but it's evident we were talking about Florida
6 conduct. There is no violation of New York law there. So the
7 only evidence we have that goes to -- that actually establishes
8 a violation of New York law, which is the object of this
9 conspiracy, and the object of the transportation conspiracy, is
10 what Jane said.

11 Now the Court did instruct the jury that they can
12 consider the testimony of Kate and of Annie for whatever
13 relevant purpose they see fit, and I suppose that could be
14 evidence of a conspiracy, correct, but for them to actually
15 convict on this, they have to believe that somebody committed a
16 violation of New York law, and that relates solely to Jane, and
17 so we don't think -- there are no multiple alleged victims of
18 this conspiracy other than Jane that's been established by the
19 evidence at trial. So we believe while they may be able to
20 consider the testimony of Annie and Kate as evidence of some
21 sort of relevant evidence that speaks to this conspiracy, that
22 is not -- they are not victims of this conspiracy, there was no
23 violation of New York law that they testified to, and that is
24 Jane alone. So this count relates solely to Jane, as does the
25 substantive count, your Honor.

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1 THE COURT: Mr. Rohrbach?

2 MR. ROHRBACH: Your Honor, this is a place where the
3 defense confuses conspiracy violations and substantive
4 violations. There does not have to be a proven violation of
5 New York law as to any of the minor victims. It just has to be
6 an agreement to accomplish that purpose. Carolyn, for
7 instance, was invited to travel by the defendant. The jury can
8 readily find that that invitation to travel included an
9 invitation to New York, where the abuse would continue, as it
10 did for Jane. Annie was in fact transported by the defendant
11 Epstein to New Mexico and New York. The jury could readily
12 find that that was a conspiracy that existed, and as part of
13 that grooming conduct, the plan would be to continue to abuse
14 her, including back in New York. These are available
15 inferences to the jury, and that's all that's required for the
16 conspiracy count.

17 THE COURT: That's precisely why there was a different
18 limiting instruction for Annie than there was for Kate.

19 MR. EVERDELL: Well, your Honor, I would dispute the
20 facts a little bit there, because they said that Carolyn's
21 testimony was that she was invited to travel to the island.
22 She was not invited to travel anywhere; she specifically
23 testified she was given an invitation to the island. That's
24 not travel to New York. And her mother said she couldn't be
25 able to go. So I don't think that is evidence -- if the object

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1 of the conspiracy is to violate New York law, then an
2 invitation to an island that's not New York doesn't count.

3 And also, an invitation to travel to New Mexico to do
4 whatever it is they were planning on doing in New Mexico is
5 also not a goal of violating New York law. I'm sorry, from
6 Arizona. So there's no connection to New York law with respect
7 to Annie's testimony either.

8 And so whatever purpose they want to glean from those
9 two witnesses' testimony, Kate and Annie, or even Carolyn, the
10 object of this conspiracy, for this to be a crime, it can only
11 be hung on the testimony, at least in the evidence in the
12 record, the testimony of Jane. And --

13 THE COURT: You're doing precisely what Mr. Rohrbach
14 said, which is you're switching back and forth between the
15 conspiracy and the substantive count. So Annie, for example,
16 the evidence is the conduct occurred in New Mexico. That's why
17 I gave the limiting instruction. But that could be considered
18 with other evidence of the conspiracy with respect to New York,
19 the violation of New York law. You don't have to have the
20 violation of New York law to establish the elements of the
21 conspiracy count.

22 So the objection is overruled.

23 Next.

24 MR. EVERDELL: All right. Next is line 13, your
25 Honor, same page.

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1 THE COURT: Okay.

2 MR. EVERDELL: We would add, the last sentence, "Count
3 Two relates solely to Jane and the time period 1994 to 1997."

4 THE COURT: Okay. Mr. Rohrbach?

5 MR. ROHRBACH: I think that's redundant, but the
6 government is fine with that.

7 THE COURT: Okay. Page 15, line 13, adding "solely"
8 between "Count Two" and "relates." No, I'm sorry. Between
9 "relates" and the word "to." So the sentence will read, "Count
10 Two relates solely to Jane."

11 Next.

12 MR. EVERDELL: Yes, your Honor. Same page, line 15.
13 This is on Count Three.

14 I'll just go back to line 14. Count "Three of the
15 indictment charges the defendant with conspiring with others to
16 transport an individual," and we would add "under the age of
17 18," "in interstate commerce," because we've eliminated "and
18 foreign."

19 THE COURT: Mr. Rohrbach.

20 MR. ROHRBACH: I believe that the elements that the
21 Court has set forth for that count is an individual under the
22 age of 17.

23 MR. EVERDELL: I'm sorry.

24 MR. ROHRBACH: Is that --

25 THE COURT: We've adopted the Sand suggestion.

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1 MR. EVERDELL: Right.

2 THE COURT: So just rather than give the jury two
3 elements with two different ages, which I think makes sense.
4 But so then the suggestion is "to transport an individual under
5 the age of 17."

6 MR. EVERDELL: Yes, your Honor.

7 THE COURT: Mr. Rohrbach?

8 MR. ROHRBACH: The government agrees that that's an
9 element of the offense. There is no reason to incorporate all
10 of the elements into the summary.

11 THE COURT: Well, he's not asking all. He's just
12 asking this one. So --

13 MR. ROHRBACH: That's fine, your Honor, although the
14 government would note that that creates an asymmetry between
15 Counts One and Three, so we think it should be in both or
16 neither.

17 THE COURT: All right.

18 MR. EVERDELL: Well, it's not an element of the
19 offense in Count One. I add it there because it says "an
20 individual" and "an individual" seems sort of vague. I mean,
21 there's testimony about lots of individuals traveling, and
22 transporting here and there. We just wanted to make it clear
23 to the jury that we're talking about individuals under the age
24 of 17 rather than all these people on the flight logs that we
25 saw who we have no evidence of their ages.

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1 MR. ROHRBACH: If this is the defense's preference,
2 your Honor, the government is fine with it.

3 THE COURT: Okay. I'll accept that request. Page 15,
4 line 15, after the word "individual," adding "under the age of
5 17."

6 Next?

7 MR. EVERDELL: Yeah. And then similar request: line
8 18, after the word "individual," add "under the age of 17."

9 THE COURT: Mr. Rohrbach?

10 MR. ROHRBACH: No objection.

11 THE COURT: Okay. Making that same change, page 15,
12 line 18, after "individual," adding "under the age of 17."

13 Let me just give my law clerk a moment to get it
14 entered.

15 Okay.

16 MR. EVERDELL: And then line 20, it's a similar --

17 THE COURT: Hang on. Hang on. Let me just read that
18 full sentence for clarity.

19 So page 15, line 18, first sentence of the paragraph,
20 "Count Four of the indictment charges the defendant with
21 transporting an individual under the age of 17 in interstate
22 commerce."

23 MR. EVERDELL: Yes, your Honor.

24 THE COURT: Go ahead.

25 MR. EVERDELL: Next line, line 20, similar to what we

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1 asked for before, last sentence, "Count Four relates solely to
2 Jane and the time period --"

3 THE COURT: Okay. I'll accept that.

4 Page 15, line 20, the sentence that begins, "Count
5 Four," adding "solely" after "relates," so the sentence would
6 read, "Count Four relates solely to Jane."

7 Okay. Next?

8 MR. EVERDELL: Page 16, line 2, similar request:
9 "Count Six relates solely to Carolyn."

10 THE COURT: Okay. I'll accept that.

11 Page 16, last line, adding "solely" after "relates"
12 and before "to Carolyn."

13 Okay. Next page.

14 MR. EVERDELL: Page 17, this is a small one, your
15 Honor.

16 THE COURT: Okay.

17 MR. EVERDELL: Lines 2 to 3, "Each count charges the
18 defendant," since we're using "Ms. Maxwell" in the other parts
19 of this charge, we'll just say, "Each count charges Ms. Maxwell
20 with a different crime."

21 THE COURT: All right. That's fine.

22 So instruction 11, page 17, line 3, changing
23 "defendant" to "Ms. Maxwell." So the sentence reads, "Each
24 count charges Ms. Maxwell with a different crime."

25 MR. EVERDELL: Your Honor, can I just have one moment.

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1 THE COURT: Yes.

2 MR. EVERDELL: Your Honor, I'm sorry. Could we just
3 return to page 15.

4 THE COURT: Sure.

5 MR. EVERDELL: Line 23.

6 THE COURT: Okay.

7 MR. EVERDELL: There, it says -- and it's also on the
8 next page, but we'll get to that. It says, "Count Five of the
9 indictment charges the defendant with conspiring to engage in
10 sex trafficking of minors. And the word "minors" depends on
11 jurisdiction, and it creates a lot of ambiguity because we've
12 got allegations, especially because the time period of the
13 conspiracy, 2001 to 2004, you know, the word "minors" is going
14 to create an ambiguity, and it raises issues with the age of
15 consent, because you're not a minor unless, you know --

16 THE COURT: You want to change it to an individual
17 under the age of 17?

18 MR. EVERDELL: Yeah, either under the age of 17 or
19 under the age of consent.

20 MR. ROHRBACH: Well, your Honor, first, for the sex
21 trafficking counts, the relevant age of consent is 18.

22 THE COURT: Right. Sorry. Thank you.

23 MR. EVERDELL: Yeah, actually, that's right. That's
24 in the language of the statute itself.

25 MR. ROHRBACH: Yeah.

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1 MR. EVERDELL: So why don't we say "under the age of
2 18," if we could, your Honor.

3 THE COURT: Is that okay, Mr. Rohrbach?

4 MR. ROHRBACH: Since it relates to multiple
5 individuals here, it would have to be "individuals under the
6 age of 18," but the government would be fine with that change
7 to avoid ambiguity.

8 THE COURT: Okay. So page 15, line 23, it will read
9 "to engage in sex trafficking of individuals under the age of
10 18." Just one moment.

11 Okay.

12 MR. EVERDELL: And your Honor, next page, it's a
13 similar request. On line 1, we would say, "Count Six of the
14 indictment charges the defendant with sex trafficking of
15 individuals under the age of 18."

16 THE COURT: Okay.

17 MR. ROHRBACH: Well, your Honor, for this one, since
18 it just relates to Carolyn, it could just be an individual, but
19 otherwise that's fine.

20 MR. EVERDELL: An individual under the age of 18.

21 THE COURT: That's right. All right. So we'll change
22 page 16, line 1 to read, "Count Six of the indictment charges
23 the defendant with sex trafficking of an individual under the
24 age of 18."

25 MR. EVERDELL: Yes, your Honor.

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1 THE COURT: Okay. Have we made it to 17?

2 MR. EVERDELL: We've made it to 19, in fact.

3 THE COURT: 19. Wow. Progress.

4 MR. EVERDELL: Page 19 is the next one, your Honor.

5 THE COURT: Okay. Go ahead.

6 MR. EVERDELL: First, on line 5, there's another "or
7 foreign," which we can omit.

8 THE COURT: Okay. Let me just look.

9 Yeah. Okay.

10 MR. ROHRBACH: It would need to be ellipses since this
11 is the statutory text, but that's fine with the government.

12 THE COURT: So we'll do, page 19, line 5, it will
13 read, "Travel in interstate... commerce," cutting "or foreign"
14 and replacing with the ellipses.

15 Okay. Next page.

16 MR. EVERDELL: Same page, your Honor, line 4.

17 Don't worry. I tried to be efficient about this.
18 We'll go quickly.

19 THE COURT: That's fine.

20 MR. EVERDELL: Line 4. There is the inclusion of the
21 statutory text "or coerces," and since we don't have any
22 evidence of coercion, our proposal would be to add -- have it
23 read "knowingly persuades, induces, or entices... any
24 individual."

25 THE COURT: Or in brackets.

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1 MR. EVERDELL: Or in brackets because it's an addition
2 to the statutory text.

3 MR. ROHRBACH: Your Honor, the government does not
4 agree with this one. The jury could conclude that the minors
5 had been coerced for the enticement counts. There's expert
6 testimony from Dr. Rocchio about how these relationships sort
7 of evolved; there's testimony from Jane in the record about
8 how, toward the end of her relationship with Mr. Epstein, she
9 felt like she was compelled to continue answering the phone and
10 would drop everything because she had no other choice. I think
11 the jury could conclude that these victims were coerced.

12 "Coercion" in this context just bears its ordinary and natural
13 meaning, and there's no reason to delete it from the charge.

14 MR. EVERDELL: Well, your Honor, I agree I know we
15 give normal meanings to these words, and coercion in my normal
16 meaning implies some sort of force, or at least of violence or
17 something, and there's no evidence of that in the record.

18 MR. ROHRBACH: It's an argument that the defense is
19 free to make to the jury.

20 THE COURT: Well, what's the legal basis for the
21 notion that coercion as used here textually requires force?

22 MR. EVERDELL: Your Honor, as in Sand, they just say
23 "given the normal everyday meaning." It's not particularly
24 helpful, but I guess that can differ by person. My normal
25 everyday meaning of "coercion" means some sort of force being

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1 used, and if that's not the Court's opinion, then --

2 THE COURT: I'm just asking if you have any legal
3 support for that principle.

4 MR. ROHRBACH: Your Honor, one good reason to think
5 that coercion does not involve force is that the sex
6 trafficking statute includes criminal activity by force, fraud,
7 or coercion, and in that statute, "force" and "coercion" carry
8 different meanings.

9 THE COURT: Okay. I'm going to overrule the
10 objection. So that will remain.

11 Next page, Mr. Everdell.

12 MR. EVERDELL: Yes, your Honor. Before I get to the
13 next page, just for purposes of clarity, if the Court overrules
14 a proposed edit, I would still note that I have that same
15 proposal going through my changes. I just won't reiterate it.
16 But I would like to just preserve those, preserve my
17 suggestions, similar ones in similar charges.

18 THE COURT: So you would repeat your request to remove
19 "coercion" from every instance, so that is preserved.

20 MR. EVERDELL: Correct, your Honor.

21 All right. So we can go to page 20 now, your Honor.

22 THE COURT: Okay.

23 MR. EVERDELL: All right. So on this one, your Honor,
24 I understand, we're talking about the substantive count, and I
25 do understand that because the way the charge is organized and

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1 the conspiracy counts come later, I think there is an attempt
2 here to generalize the wording of the elements because it's
3 going to be applied later to the conspiracy counts, right? But
4 this is the substantive count, and if we look at the line 5, it
5 says first that the defendant knowingly persuaded or induced or
6 enticed or coerced an individual to travel in interstate
7 commerce. The individual in the substantive count is Jane.
8 The defense request is for it to say not "an individual,"
9 replace that with "Jane to travel in interstate commerce from
10 Florida to New York, as alleged in the indictment."

11 THE COURT: Mr. Rohrbach.

12 MR. ROHRBACH: So, your Honor, I don't think the jury
13 will be confused. Both in the summary and later on in this
14 section, it says this relates to Jane. If the defense would
15 like it to say it relates solely to Jane here as in the
16 summary, that would be fine, but the Court is just laying out
17 the elements of the offense and there's no need to put all of
18 the factual predicates of the offense into the statement of the
19 elements. I think here and elsewhere, the defense --
20 Mr. Everdell can correct me, but an issue in the parties'
21 proposed requests to charge is whether things like the name
22 Jane, travel to New York, the name Jeffrey Epstein should all
23 be included in the recitation of the elements. I think the
24 defense is getting that because it's in the "to wit" clause of
25 the indictment, and the law is quite clear -- and I have

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1 authority if the Court would like -- that the fact that there
2 are proper nouns in the "to wit" clauses does not mean the
3 government is bound by them as elements of the offense, as long
4 as the government is proceeding on the essential elements of
5 the crime as charged by the grand jury. And I think there's no
6 suggestion -- it's quite clear that the government has been
7 trying to prove the offenses in the indictment and there's no
8 need to include words like "travel from Florida to New York,"
9 or "Jane," to avoid any suggestion of a variance.

10 THE COURT: Yes, I agree with that. Obviously this
11 dispute was in the parties' proposed charge, and I balanced I
12 think, as appropriate, including the name of the individual
13 where a particular count applies only to them, but not
14 otherwise restating factually in the explanation of the counts
15 and the elements each of the factual points to be proved. So I
16 think here, Mr. Rohrbach, you didn't disagree with substituting
17 Jane for an individual?

18 MR. ROHRBACH: Well, that just creates the -- the
19 government thinks the charge is fine as it is because, in
20 line 11, it says it relates to Jane, and the government would
21 be fine with adding "solely to Jane," or "relates," if that's
22 what the defense would like. I do think adding Jane in line 6
23 would create a problem when it's later incorporated by the
24 conspiracy instruction.

25 THE COURT: Okay. I agree with that. And that's the

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1 usefulness of line 11, which states expressly Count Two, and
2 I'll add, "Count Two relates solely to Jane during the time
3 period 1994 to 1997," for the reason indicated. Because the
4 conspiracy count requires looking back to the substantive count
5 for the object of the conspiracy.

6 I won't adopt the requested change within the
7 statement of the elements.

8 Anything else on page 20?

9 MR. EVERDELL: With the addition of solely, your
10 Honor, on line 11, there is just, on line 7, another "or
11 foreign" that we need to omit.

12 THE COURT: Okay. Thank you. So from the second
13 element, page 20, line 7, the sentence that begins with
14 "Second," cutting "or foreign." Okay.

15 MR. EVERDELL: Page 21, your Honor. On line 4, I'll
16 just reiterate, I understand this has been overruled by the
17 Court but we would propose replacing "an individual" with the
18 word "Jane." On line 5, there is "or foreign," which should be
19 omitted.

20 THE COURT: Thank you. Page 21, line 5, "to travel in
21 interstate commerce," cutting "or foreign."

22 Okay.

23 MR. EVERDELL: On line 6 we would just reiterate our
24 objection to the word "coerced." I understand that's been
25 overruled. But then, your Honor, generally I would say the

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1 word "coerced" we would like to remove. We understand that's
2 been overruled by the Court.

3 Okay. But there is some additional language we would
4 propose at the end of line 6, and this is something that I
5 raised I think in a letter submission in -- or not in a
6 letter -- orally at the Rule 29 argument. It's based on *U.S.*
7 *v. Broxmeyer*, which, as I argued to the Court at the Rule 29
8 argument, the words "persuade," "induce," and "entice" are
9 words of causation and they need to cause an effect, and so
10 what we would propose after the sentence, "The terms
11 'persuaded,' 'induced,' 'enticed,' and 'coerced' have their
12 ordinary, everyday meanings," we would propose adding the
13 following language: "This element is satisfied only if the
14 'persuasion,' 'inducement,' or 'enticement' caused Jane to
15 travel in interstate commerce as alleged in the indictment."
16 We're basing that on *U.S. v. Broxmeyer*, interpreting those
17 words from a different but related statute.

18 THE COURT: Give me one moment.

19 MR. EVERDELL: I have a copy of *Broxmeyer*, your Honor,
20 if you'd like to see it.

21 THE COURT: Sure. I'll take it.

22 MR. EVERDELL: Your Honor, I believe it's on page 125
23 of the opinion.

24 THE COURT: Okay. The relevant language.

25 MR. ROHRBACH: Your Honor, this is not just a

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1 different statute, it's quite a different statute. It's the
2 production of child pornography statute. And also, the
3 question in *Broxmeyer* was somewhat different. It was a
4 sufficiency of the evidence question about whether the
5 government's evidence showed that the persuasion or inducement
6 occurred before the production of the child pornography, and so
7 that's -- I don't think that this case stands for a particular,
8 like, form of causal nexus that's required between
9 "persuasion," "inducement," or "coercion" and the travel
10 itself. I think the jury will be confused by an instruction
11 along those lines because it suggests that some amount of
12 causation is required above the inherent causation in the
13 statutory terms of inducement or enticement. Those are words
14 of causation, but they are sort of words of causation in the
15 plain and ordinary sense and not in any greater or more
16 significant sense that I think a further instruction on that
17 point would suggest.

18 MR. EVERDELL: Your Honor, if I could just respond. I
19 don't think this is heightening the level of proof. I think
20 this is simply -- the opinion is simply explaining what is
21 required by those words, "persuasion," "inducement,"
22 "enticement," and those words are the exact same words that are
23 used in the statute, so I don't think the context of the case
24 really matters in terms of what those words mean. There may be
25 some inherent causation built into these words, but this is

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1 explaining the fact that that causation needs to exist. In
2 case there's any doubt in the minds of the jurors, there does
3 need to be causation. There has to be an effect from the
4 inducement, the persuasion, the enticement.

5 MR. ROHRBACH: First there has to be some sort of
6 causal relationship. That's what the word "inducement" means,
7 for example, as a form of a causal relationship. I'm certainly
8 not aware of any case or treatise that provided this
9 instruction. Maybe perhaps defense counsel is. But, you know,
10 the fact that it is in *Broxmeyer* does not mean it's appropriate
11 to give a further and more specific instruction about causation
12 than is already inherent in the ordinary meaning of these
13 words.

14 THE COURT: Just so I have my head around it, the
15 specific suggestion was what, Mr. Everdell?

16 MR. EVERDELL: "This element is satisfied only if the
17 persuasion, inducement, or enticement caused Jane," or we can
18 say "caused the individual," "to travel in interstate commerce
19 as alleged in the indictment."

20 MR. ROHRBACH: The problem, your Honor, is that to the
21 extent that those words already mean to cause, inducement has a
22 causal meaning, persuasion has a causal meaning. It's already
23 in the instruction. And to say, you can only satisfy those
24 words if she caused the travel suggests that there are two
25 requirements -- there's the requirement that the defendant

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1 induced the travel, and a separate requirement that she caused
2 the travel. And there's no causal obligation or causal
3 requirement in the statute above and beyond the persuasion,
4 inducement type causal requirement.

5 MR. EVERDELL: I mean, your Honor, if the objection is
6 to the preamble by saying, "This element is satisfied only if,"
7 we could modify that a bit, if the government's saying that is
8 too strong, but the guts of the suggestion is that the
9 persuasion, inducement, or enticement must have caused the
10 individual to travel in interstate commerce, as alleged in the
11 indictment.

12 THE COURT: I mean, I've seen this charge in a variety
13 of cases. I've never seen that language. This decision is
14 2010. Have you ever seen it in a charge?

15 MR. EVERDELL: I can't say that I have, your Honor.
16 But it is interpreting the very words of the statute that are
17 at issue here, and I don't think this is the way that -- the
18 proposal I'm proposing is not trying to belabor the point, but
19 it is trying to raise the issue of causation.

20 THE COURT: I mean, the opinion includes further
21 definition of the words that are subject to the ordinary
22 meaning, the paragraph above that you point to.

23 MR. EVERDELL: Your Honor, I'll add that it is
24 possible to be persuaded, induced or enticed, and then not
25 actually travel. I mean, the persuasion does have to cause the

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1 travel, so that there has to be a causation, some effect of the
2 persuasion.

3 MR. ROHRBACH: Well, the instructions say that there
4 has to be persuasion and inducement or enticement to travel,
5 and the individual has to actually travel. Those concepts are
6 all already captured in the instruction. These instructions
7 for this element are just -- or this offense are quite standard
8 that are in the Court's jury charge.

9 THE COURT: Yeah, I think that's right. It seems to
10 me -- well, one, it's a standard charge for this provision;
11 two, it's accurate; three, adding -- I mean, it seems to me
12 that the basic suggestion applies additional causation beyond
13 what's required by the ordinary meaning, and I don't see a
14 basis for that. So I will overrule the request.

15 What's next?

16 MR. EVERDELL: One moment, your Honor?

17 THE COURT: Yes.

18 MR. EVERDELL: Your Honor, next request is at page 23.

19 THE COURT: Okay.

20 MR. EVERDELL: This is at line 15 through 22, which is
21 the instruction on significant or motivating purpose --

22 THE COURT: Yes.

23 MR. EVERDELL: -- which was a suggestion from the
24 defense, and we appreciate the Court's inclusion.

25 THE COURT: Well, I think you'd suggested significant

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1 and, if I'm remembering correctly --

2 MR. EVERDELL: Yes, your Honor. That may be true.

3 THE COURT: Yes. Go ahead.

4 MR. EVERDELL: So we have found a different
5 instruction on this point which we would ask the Court to
6 consider, and it comes from *United States v. Miller*, and I can
7 hand that up to the Court and the government.

8 THE COURT: Just to be clear, I adopted your
9 suggestion and now you're asking me to do something different.

10 MR. EVERDELL: Well, it is true, your Honor, and I
11 will keep what I have, if this is objectionable to the Court.
12 But we only found this one as we were looking through with
13 respect to the charge.

14 THE COURT: It happens. Just give me a moment to get
15 to my notes on this one.

16 MR. EVERDELL: Your Honor, I can give a typewritten
17 proposed instruction.

18 Page 211 of the opinion is the instruction that was
19 given by Judge Rakoff.

20 THE COURT: And what's the charge in the *Miller* case?

21 MR. EVERDELL: Well, your Honor, *Miller* was found
22 guilty of 2422 and 2423, the same statutes we're talking about.

23 THE COURT: Okay. So the proposal is, in order to
24 establish the element, the government must prove that it was
25 part of Ms. Maxwell's conscious purpose in having Jane travel

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1 across state lines to have her engage in criminal sexual
2 conduct, in violation of New York law. It need not have been
3 her only purpose or motivation, but it must have been more than
4 merely incidental. It must have been one of the dominant
5 purposes of the trip.

6 MR. ROHRBACH: Your Honor, all that the law requires
7 is that it be one of the dominant purposes of the trip, which
8 is the instruction that the defense originally sought and the
9 Court gave. It's the practice, as Sand endorses, to rephrase
10 "dominant" as "significant or motivating purpose" to avoid
11 confusion, because it doesn't have to be the sole dominant
12 purpose, it just has to be a dominant purpose, and so from
13 Sand, that creates ambiguity that it has to be a sufficient --
14 such a big purpose that it's the dominant purpose, which is not
15 what is required by the statute. This instruction suggests
16 there's an additional requirement, which is that it be some
17 sort of conscious purpose to engage in the particular criminal
18 violation suggesting knowledge of the criminal statute and
19 criminal prohibition. All the *Miller* case does is affirm that
20 this instruction is not error. It does not say that that is
21 the required instruction by -- at least as I'm reading the --
22 I'm reading the *Miller* case for the first time now, but it is
23 an appeal from a conviction on that instruction. It is not
24 suggesting that it's required by --

25 THE COURT: Let me look. I've only read the --

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1 MR. ROHRBACH: I've only read portions of it too, but
2 that's my quick read.

3 THE COURT: So the defendant's argument in *Miller* was
4 that the prostitution or other criminal sexual activity must be
5 the dominant purpose of the interstate travel rather than only
6 one of the dominant purposes as the judge charged.

7 MR. ROHRBACH: In fact, your Honor, I think in light
8 of that conclusion, the final sentence of the defense's
9 proposed instruction would be suggestive of error because the
10 point is that -- or at least creates the very confusion that
11 arose in *Miller* about whether it has to be one of the dominant
12 purposes. The use of the word "dominant" is a source of
13 confusion, as Sand has explained.

14 MR. EVERDELL: Well, your Honor, on that point, the
15 language "significant or motivating purpose" is completely
16 invented by Sand, right, and now people have used it because
17 Sand is an authority in this area, but that does not -- that
18 did not come from case law. That is Sand's proposal to deal
19 with the issue of the dominant purpose versus one dominant
20 purpose. There is, however, case law in many circuits where
21 the instruction "one dominant purpose" is accepted instruction,
22 and the *Miller* case endorses that instruction because that was
23 the charge that was given by Judge Rakoff and they said it was
24 perfectly proper to give that charge. So I actually think
25 there is more support in the case law for the "one dominant

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1 purpose" language than language that happened to have been
2 invented by Sand. As smart as Judge Sand was, that did not
3 actually come from any circuit case law. So we propose going
4 with what the courts have actually said on this issue rather
5 than a proposal in Sand.

6 THE COURT: I'm just going to read for a moment.

7 I think I want to start by asking what's wrong with
8 the current instruction, the one that you proposed that I
9 adopted? That's the one that I've seen in --

10 MR. EVERDELL: Well --

11 THE COURT: -- in charges.

12 MR. EVERDELL: Your Honor, there's nothing wrong with
13 it per se. It is a charge that has been used in other cases,
14 and we proposed it, so we obviously think it's acceptable. But
15 I think the new proposed charge is a charge that is more
16 accurate and also tracks the case law development on this point
17 because the dominant purpose is actually something that was in
18 a Second Circuit opinion and it's, you know -- Judge Rakoff has
19 tried to craft an instruction in *Miller* to deal with the issue
20 of one dominant purpose versus the dominant purpose, but the
21 way that I think the case law has developed in the Second
22 Circuit, it started with "dominant purpose" was the language
23 used and then we had to deal with this issue of ambiguity
24 there, and this is how Judge Rakoff came out, but was still
25 keeping the "dominant purpose" language but clarifying it was

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1 only one of the dominant purposes.

2 THE COURT: Let me just note my remarkably crack law
3 clerks have found the following case: *United States v. An Soon*
4 *Kim*.

5 MR. EVERDELL: Yes.

6 THE COURT: You're aware of it.

7 MR. EVERDELL: Yes. But that case --

8 THE COURT: Just let me give the cite. 471 F. App'x
9 82 (2d Cir. 2012). Summary order, obviously, but it says a
10 couple of things. One -- ooh, I lost what my crack law clerk
11 sent there. It endorses the Sand language over "dominant."
12 "These instructions are legally sound. Neither 'dominant' nor
13 'predominant' appear in the statutory language. Although we
14 have previously approved a jury charge that included the phrase
15 "one of the dominant purposes," (see, e.g., *Miller*) we've never
16 required such language to appear in a jury charge on 2421.
17 Indeed, Judge Sand recommends excluding the word 'dominant'
18 from the charge so as to avoid confusion." And then at the end
19 of the opinion, "The charge given by the district court, which
20 closely tracks the charge outlined by Judge Sand, accurately
21 and thoroughly conveyed the second element of the crime.
22 Accordingly, we find no error, much less plain error, in the
23 jury charge."

24 MR. EVERDELL: Yes. So the way I read that case, your
25 Honor, is that there are two variants on how this charge has

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1 been given in the Second Circuit, both of which have been
2 endorsed by the Second Circuit, neither of which is required
3 but both are permissible.

4 THE COURT: But I think what we have here is Second
5 Circuit agreeing with Sand that "dominant" can be confusing.
6 And so I will stick with your original proposal and not the
7 request to change that out now for the language adopted by
8 Judge Rakoff because it would include the -- although deemed
9 not error, it would include the "one dominant purpose"
10 language, which is potentially confusing and not moored to the
11 text of the statute.

12 What's next?

13 MR. EVERDELL: Understood, your Honor.

14 The next page, your Honor?

15 THE COURT: Yes, please.

16 MR. EVERDELL: Page 24. So this is the page where the
17 charge describes the violation of New York law.

18 THE COURT: Page? Oh, I'm sorry. I'm on my annotated
19 version. Just a second.

20 Yes.

21 MR. EVERDELL: Well, first, this one very small change
22 on line 19, if we could replace "the defendant" with
23 "Ms. Maxwell."

24 THE COURT: Okay.

25 MR. EVERDELL: But there's a larger request.

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1 THE COURT: All right. Page 24, line 19, I'll adopt
2 that change. So instead of "the defendant," "Ms. Maxwell."

3 Just one moment.

4 Okay.

5 MR. EVERDELL: Okay. So the additional request is --
6 this is where the issue of the fact that Kate was above the age
7 of consent and about the fact that -- well, Annie's testimony
8 was not a violation of New York law. That's what the Court
9 gave the limiting instruction to the jury on. We think that it
10 is appropriate to incorporate those limiting instructions into
11 the jury charge and that this is the place where it should be
12 given. Because it's one thing to give the limiting instruction
13 at the time of the testimony -- that is what we asked for and
14 we appreciate the Court doing that -- but I think that they
15 need to be instructed again before they go into deliberations,
16 now having heard 12 plus days of testimony, that what those
17 considerations -- that testimony they are allowed to consider
18 for what purpose, because if they're given an instruction on
19 New York law, I think it's time to reiterate in the charge to
20 them that Kate was over the age of consent and was not
21 involved -- it cannot be considered illegal sexual activity,
22 because this is where the illegal sexual activity is defined.
23 And same with Annie. I have a proposed instruction to add
24 here, but it tracks the language of the limiting instruction
25 the Court gave, so I don't think it's adding any language. I

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1 can hand it up.

2 THE COURT: Sure.

3 MR. EVERDELL: And your Honor, as you consider that,
4 there is one proposed addition I just want to request to what's
5 on that page, but I want to handle that slightly separately.

6 THE COURT: The representation is these are --

7 MR. EVERDELL: Yeah.

8 THE COURT: -- my limiting instructions given before
9 Kate and Ms. Farmer testified, and you're asking for
10 inclusion -- repetition of those limiting instructions where
11 the violation of New York criminal law is provided.

12 MR. EVERDELL: That's correct, your Honor. And we
13 would propose just putting it at the end after the discussion
14 that's already there.

15 THE COURT: Mr. Rohrbach.

16 MR. ROHRBACH: I think that among other things, your
17 Honor, I think that would be -- the instruction as you've
18 crafted it is a correct statement of New York law and the
19 relevant issues. Adding these instructions would be quite
20 confusing to the jury. The jury has already heard them. This
21 is the place where there's no reason to give the Kate
22 instruction because these jury instructions state specifically
23 that the jury may not convict based solely on overt acts that
24 relate to Kate, and so there is no risk, when these full set of
25 instructions is read to the jury, that they will think that

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1 they can convict based on the illegal sexual activity as it
2 relates to Kate and as it relates to Annie. Annie only relates
3 to the conspiracy counts, at least as to these Mann Act
4 charges, and the jury is going to be instructed here that the
5 relevant illegal sexual activity has to be the violation of the
6 New York offense. So again, there's no risk that the jury will
7 think that the sexual contact that happened in New Mexico is
8 something that on its own is sufficient to show the illegal
9 sexual activity required by the statute. So, here, in the full
10 set of instructions, there's no need for an additional
11 instruction, especially on top of the fact that the Court has
12 already given these limiting instructions to the jury.

13 THE COURT: All right. I agree with that.

14 MR. EVERDELL: Well, your Honor, there's one other
15 issue, which is the part that's not in the typewritten
16 instruction I handed you, which is the fact that Jane testified
17 about traveling to New Mexico at various times in her
18 testimony. And there was I think one trip she may have said
19 she was under the age of 16, which -- 15 or 16 I think is what
20 she said as to that trip, which we believe is the actual legal
21 age of consent in New Mexico; but she also testified about
22 other travel to New Mexico, where events took place, where
23 sexual contact took place, and so I think with respect to that,
24 we are going to need some kind of instruction to the jury that
25 if she's above the age of consent in New Mexico, that can't be

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1 considered illegal sexual activity for the purposes of their
2 deliberations. It's not as charged in the indictment. We're
3 talking about New York law, so I don't know if that was made
4 clear to the jury.

5 MR. ROHRBACH: Your Honor, these instructions do not
6 put before the jury any violation of any New Mexico offense
7 whatsoever above or below the age of consent, so I think
8 there's no risk that the jury is going to convict the defendant
9 based on their concerns about a violation of a New York
10 offense.

11 MR. EVERDELL: That's not really the issue about what
12 instructions to put before the jury. The testimony put before
13 the jury, sexual contact between Jane and Epstein in New Mexico
14 after what we believe is the age of consent in New Mexico, and
15 so if --

16 THE COURT: That's why, I think, it's the same reason
17 I gave limiting instructions as asked with respect to the
18 testimony of Kate and Annie. I think what I'm hearing you say
19 is, you meant to ask for a limiting instruction at that time?

20 MR. EVERDELL: Well, your Honor, we knew from the
21 proffered 3500s for the other witnesses what they were planning
22 on testifying to, so we were able to request those at the time
23 before the witnesses testified and brief those *in limine*. I
24 didn't think we -- what we knew about Jane ahead of time was
25 that she alleged that she traveled to New Mexico but that

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1 nothing happened on the New Mexico trips, and then I think it
2 came out in the testimony -- unless the government wants to
3 correct me if we're wrong about that, but I think that our
4 status of our knowledge was that we weren't expecting to hear
5 about testimony about sexual contact in New Mexico. But they
6 can correct me if I'm wrong about that.

7 MR. ROHRBACH: I believe that Jane only testified as
8 to one sexual incident of sexual abuse in New Mexico and that
9 that was reflected in the 3500 material. I think Ms. Pomerantz
10 is looking for it, but it should not have been a surprise to
11 the defense.

12 THE COURT: Yeah. I mean, the problem -- the
13 instructions are accurate. It's clear it's a violation of New
14 York law. This was the government's argument for not giving
15 the limiting instructions that I gave with respect to Annie and
16 Kate, but I did give those instructions. It sounds like maybe
17 there was an instance in which the defense might have requested
18 one following a particular piece of testimony. To add that
19 now, having not -- well, let me put it this way. Having not
20 asked for a limiting instruction then I don't think provides a
21 basis for inclusion of limiting instructions, repetition of
22 limiting instructions in the charge, and even without it, which
23 was the government's original argument, it's clear that the
24 violation of law is as charged in New York. So I'm not
25 persuaded to include it. I'm not persuaded to include it.

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1 MR. EVERDELL: Understood, your Honor.

2 Okay. Next page, your Honor?

3 THE COURT: Yes.

4 MR. EVERDELL: The next one we have is on page 26.

5 THE COURT: Okay.

6 MR. EVERDELL: We would reiterate, just for the
7 purposes of the record, of including "Jane" as opposed to "an
8 individual" or "the individual." That's been overruled, but we
9 will ask that the word "solely" be included on line 12, so,
10 "Count Four also relates solely to Jane."

11 MR. ROHRBACH: No objection.

12 THE COURT: Okay. We'll make that change. And my
13 clerk tells me we missed an "and foreign" on page 25.

14 MR. EVERDELL: Yes, yes. So we do have to go back to
15 page 25. So on line 5, there's an "or foreign."

16 THE COURT: So that will be with the ellipses. So
17 page 25, line 5, "interstate... commerce..."

18 MR. EVERDELL: Yes. And there's one other thing on
19 that page, your Honor, I forgot to mention.

20 THE COURT: Just a moment.

21 Okay. Go ahead.

22 MR. EVERDELL: Your Honor, on line 4 of that same
23 page, 25, I know it's a quote from the statute, which does say,
24 "knowingly transports any individual under the age of 18," but
25 this is the issue with New York law being under the age of 17,

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1 which is on the next page, page 26. The third element says
2 that the defendant knew that Jane was less than 17 years old.

3 THE COURT: Do you want to do bracket?

4 MR. EVERDELL: Yeah, I think we should do a bracket.

5 THE COURT: Mr. Rohrbach?

6 MR. ROHRBACH: That's fine. The government proposed
7 perhaps an awkward instruction I think to perhaps explain this
8 to the jury. This is an elegant solution.

9 THE COURT: I spent an inordinate amount of time
10 thinking through precisely this question, and I decided that
11 it's best just to do this because it would just be confusing.
12 I mean, it is a separate element, but it would just be
13 confusing. So I think this is a good suggestion.

14 Page 25. So we'll take out -- well, why don't we do
15 this. Why don't we do "under [the age of 17 years] in
16 interstate commerce."

17 MR. EVERDELL: That's fine, your Honor.

18 MR. ROHRBACH: That's fine with the government.

19 MR. EVERDELL: That's perfectly acceptable.

20 THE COURT: So page 25, line 4, "Any individual under
21 [the age of 17 years] in interstate commerce."

22 Okay. What's next?

23 MR. EVERDELL: We covered page 26 already, so -- and
24 on page 27, I believe there's an "or foreign" issue, so line 5.

25 THE COURT: Yes. Page 27, line 5, deleting "or

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1 foreign."

2 MR. EVERDELL: And then also on lines 7 to 8, it said,
3 "from one state to another or between the United States and a
4 foreign country," so we should eliminate "or between the United
5 States and a foreign country."

6 MR. ROHRBACH: No objection.

7 THE COURT: Okay. Page 27, lines 7 through 8 -- oh,
8 and also the sentence above has "or foreign" in the quote, so
9 we'll ellipses I guess the phrase "transport an individual in
10 interstate," cutting "or foreign," adding "... commerce." And
11 then the next line, ending the sentence after "another," so it
12 would read "from one state to another," cutting "or between the
13 United States and a foreign country."

14 MR. EVERDELL: Yes, your Honor.

15 THE COURT: Hang on one second.

16 Oh. My clerk makes a good point. We should just cut
17 "or foreign" in that quote, not do ellipses, because I'm just
18 quoting myself.

19 MR. EVERDELL: That's right.

20 THE COURT: Okay. So line 6 is just "transporting an
21 individual in interstate commerce."

22 Okay. Next.

23 MR. EVERDELL: And your Honor, I did just notice
24 something, because I always forget to focus on the titles
25 sometimes, but for Count Four, they all refer to transportation

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1 of a minor to engage in, so I think we need to change the
2 titles for Count Four, and I can get you the pages in a second,
3 but "transportation of an individual under 18 to engage in
4 illegal sexual activity."

5 MR. ROHRBACH: That's fine, your Honor, but this
6 actually raises a related question, which is just whether the
7 Court sends the indictment back with the jury, since I think
8 the indictment has the same issue. It describes some of the
9 offenses in their captions as "of a minor."

10 THE COURT: Well, what are the parties' positions on
11 that?

12 MR. ROHRBACH: The government is not seeking to send
13 the indictment back, your Honor.

14 MR. EVERDELL: One moment, your Honor.

15 THE COURT: Yes.

16 MR. EVERDELL: Your Honor, the defense would not like
17 that to happen. We think that the instructions advise the jury
18 about what they need to know about the law.

19 THE COURT: You're saying you don't want to send the
20 indictment back.

21 MR. EVERDELL: Right.

22 THE COURT: You're in vigorous agreement.

23 MR. EVERDELL: Oh, I thought we were disagreeing.
24 That's so rare. Yes, we're in agreement with that.

25 THE COURT: I don't send it back unless the parties

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1 agree.

2 MR. ROHRBACH: That's fine, your Honor. We're in
3 agreement. How about that? So then the edit to this title is
4 fine and there's no need to make it track the indictment.

5 THE COURT: And this one --

6 MR. EVERDELL: So, your Honor, this would apply to
7 pages 25, 26, 27 --

8 THE COURT: Can you give me the instruction numbers,
9 because my clerk's pages are off now that we made edits.

10 MR. EVERDELL: Yes, sure. It's Instruction No. -- let
11 me get the first one. 18, 19, 20, 21, 22, and I think that's
12 it.

13 THE COURT: Okay. And the request here is?

14 MR. EVERDELL: We would change the title to
15 "Transportation of an Individual Under 18 to Engage In --"

16 MR. ROHRBACH: It would be 17.

17 MR. EVERDELL: 17, yes.

18 THE COURT: Okay. So for all of the Count Four
19 titles, we'll change "a Minor" to "an Individual Under the Age
20 of 17."

21 MR. ROHRBACH: And I'm sure the Court will likely make
22 this change automatically, but just to note that that change
23 would need to be reflected in the Table of Contents as well.

24 THE COURT: I believe that auto-populates it. I
25 wouldn't know how to do that, but I believe that's what

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1 happens. But we will double-check it. Thank you.

2 Okay. What's next, Mr. Everdell?

3 MR. EVERDELL: Well, your Honor, just page 28, to
4 preserve our suggestion, we would request to substitute the
5 *Miller* charge. We understand that's been overruled. Lines 11
6 to 17.

7 THE COURT: Okay.

8 MR. EVERDELL: Then I think we can skip to page 32.

9 THE COURT: That was your first one, right,
10 Mr. Rohrbach?

11 MR. ROHRBACH: It was, although, your Honor, we have,
12 in the course of our conversations, resolved that, so the
13 government has no -- our next edit, our next request, is on
14 page 69, actually.

15 THE COURT: Okay. Page 32, Mr. Everdell.

16 MR. EVERDELL: Yes, still on 32 for the defense. We
17 request on line 10, "This count relates solely to Carolyn."

18 MR. ROHRBACH: No objection.

19 THE COURT: Okay. Thank you. We'll make that change.
20 Instruction No. 25, line 10, "This count relates," adding the
21 word "solely," "to Carolyn."

22 All right. Mr. Everdell, next page.

23 MR. EVERDELL: One moment, your Honor.

24 THE COURT: My clerk notes that we have "Minor" in the
25 heading of all the Count Six --

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1 MR. EVERDELL: So this one, because the statute is 18,
2 it would have to be sex trafficking of an individual under the
3 age of 18.

4 THE COURT: I agree with that.

5 Mr. Rohrbach?

6 MR. ROHRBACH: No objection, your Honor.

7 THE COURT: Okay. So go ahead. You want to call them
8 off, the instruction numbers for that, Mr. Everdell?

9 MR. EVERDELL: Sure, your Honor. That is Instruction
10 Nos. -- just a minute -- 24, 25, 26, 27, 28, and 29.

11 THE COURT: Okay. So for all of those, we'll take out
12 "a Minor" and replace with "an Individual Under the Age of 18."

13 MR. EVERDELL: Right.

14 THE COURT: Next page.

15 MR. EVERDELL: Okay. So we just dealt with page 32,
16 which is the addition of the word "solely" on line 10?

17 THE COURT: Yes.

18 MR. EVERDELL: All right. Then on page 35, small
19 edit. At line 13, replace "the defendant" with "Ms. Maxwell."

20 THE COURT: Okay. Page 35, line 13, replacing "the
21 defendant" with "Ms. Maxwell."

22 MR. EVERDELL: Yeah.

23 THE COURT: Okay.

24 MR. EVERDELL: Okay. Yes. And just for clarity's
25 sake, your Honor, we're not replacing every instance of the

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1 word "defendant" with "Ms. Maxwell." We tried to pick the ones
2 which made sense, and I understand the Court did the same.

3 THE COURT: I was trying to do that as well, as is
4 typical in my charges.

5 MR. EVERDELL: Yes, understood.

6 So I think our next one is not until -- I'm just
7 checking with my colleagues -- is not until page 49, but give
8 me one minute.

9 THE COURT: Okay.

10 MR. EVERDELL: Okay. Actually, your Honor, if we go
11 back to page 44.

12 THE COURT: 44? Okay.

13 MR. EVERDELL: So this is line 4. We have the word
14 "minors" again, right? This is a discussion of the elements of
15 the conspiracy, but, "Count One charges Ms. Maxwell with
16 participating in a conspiracy" etc., etc. "to entice minors to
17 travel and engage in sexual activity." And there are other
18 instances of "minors" in line 15. It's "to transport minors."

19 THE COURT: So for all of these, this would be "an
20 individual under the age of 17."

21 MR. EVERDELL: Well, yes. So it's going to be line 4,
22 line 6, line 15, and line 19.

23 THE COURT: Mr. Rohrbach?

24 MR. ROHRBACH: That's fine, your Honor. And I would
25 note in the next paragraph, there is a reference to "minor,"

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1 and there the change should be "under the age of 18" rather
2 than 17, but the conforming changes make sense.

3 THE COURT: Okay. Let me just articulate these.

4 MR. EVERDELL: That's fine.

5 THE COURT: So Instruction No. 34 on lines 4, 6, 15,
6 and 19, we're going to replace "minors" with "individuals under
7 the age of 17."

8 MR. EVERDELL: And there's one on line 10 as well,
9 your Honor.

10 MR. ROHRBACH: As well as line 13, your Honor.

11 THE COURT: Come on. The clerks are good, but, you
12 know, it's Saturday, after all.

13 We'll do a search and replace also, but I think it is
14 worth doing, since some of them are under 17 and some are under
15 18.

16 MR. EVERDELL: That's right, your Honor.

17 THE COURT: Okay. So let me just repeat.

18 So Instruction 34, lines 4, 6, 10, 13, 15, and 19, we
19 will replace "minors" with "individuals under the age of 17."

20 MR. EVERDELL: Correct, your Honor.

21 THE COURT: And then moving to replacing the word
22 "minor" with "an individual under the age of 18," Mr. Everdell,
23 that's line 24.

24 MR. EVERDELL: Yes, your Honor.

25 THE COURT: And what else?

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1 MR. EVERDELL: And then the next page, page 45,
2 line 1, there's the word "minor," which would be "an individual
3 under the age of 18."

4 MR. ROHRBACH: Your Honor, in this paragraph, since
5 this is the conspiracy that applies to multiple minors, I think
6 it should be "individuals under the age of 18" rather than just
7 one.

8 MR. EVERDELL: That's fine.

9 THE COURT: For the second -- yeah. Right. So that
10 is important that we're doing these one at a time. So line 24,
11 it's "an individual under the age of 18." And then the next
12 page, page 45, line 1, it's --

13 MR. ROHRBACH: I think they both should be --

14 THE COURT: They both should be "an individual under
15 the age of --"

16 MR. ROHRBACH: I think they both should be
17 "individuals under the age of 18."

18 THE COURT: I'm sorry. You're right. They're both
19 the conspiracy.

20 MR. EVERDELL: That's right, your Honor.

21 THE COURT: Okay. I apologize. Let me start again.
22 So Instruction No. 34, line 24, "individuals under the age of
23 18," on line 24; and then the following page, line 1, same
24 change, "individuals under the age of 18"; and then same change
25 on line 3.

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1 MR. EVERDELL: Slightly different. That would be "an
2 individual under the age of 18," because that's the substantive
3 count.

4 THE COURT: Yes. Line 3, replacing "minors" with
5 "an --" wait. Let me just read that sentence again.

6 MR. ROHRBACH: I think these are all references to the
7 conspiracy.

8 MR. EVERDELL: That's right. I'm sorry, your Honor.
9 This is still talking about the conspiracy. So that one on
10 line 3 would still be "sex trafficking of individuals under the
11 age of 18."

12 THE COURT: Yes. I agree with that.

13 Okay. So for all of Instruction 34, all of the
14 instances -- well, in the second paragraph -- no, I'm sorry. I
15 won't repeat it. We got it. Page 45, line 3, "individuals
16 under the age of 18."

17 Okey dokey. Next.

18 MR. EVERDELL: So, your Honor, now we have page 49, or
19 instruction No. 36. It's --

20 THE COURT: I'm sorry. What page? 49?

21 MR. EVERDELL: Page 49, Instruction 36.

22 THE COURT: Okay. Actually, before you start, I'll
23 just note, there's an extra word, "Two," T-W-O, in the title.
24 So line 1, it's just Counts One, Three, and Five, deleting the
25 word "Two."

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1 MR. EVERDELL: Oh, yeah. Agreed, your Honor.

2 MR. ROHRBACH: Yes.

3 THE COURT: What do you have, Mr. Everdell?

4 MR. EVERDELL: So this is where it gets a little
5 complicated, your Honor. I mean, I know that in lines 11
6 through 22, we're listing -- and in the next page as well,
7 we're listing out the overt acts in the indictment. We're
8 listing them verbatim, but they're talking about ages, under
9 the age of 18, under the age of 18, and we've already talked
10 about how the ages are sort of different depending on the
11 statutes. That's one issue. Right. So we might want to
12 replace the -- instead of the ages -- and I know -- it's less
13 of an issue because I think we've agreed that the indictment is
14 not going back to the jurors, so they're not going to be
15 reading the language, but maybe instead of "under the age of
16 18," "when Jane was under the relevant age of consent in the
17 relevant jurisdiction," or something to that effect.

18 MR. ROHRBACH: Your Honor, if I may. I understand the
19 concern the defense is raising. I think for Counts One and
20 Three, since the relevant age of consent I think everyone
21 agrees is 17, the government would be fine with saying "under
22 the age of 17," and we'd have to say "the indictment alleges"
23 or something like that, because it would no longer be following
24 the text of the indictment.

25 THE COURT: Yes. I mean, we could do "alleges" or

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1 brackets or something.

2 So are you okay with "alleges" there, Mr. Everdell?

3 MR. EVERDELL: Well, let me see about that.

4 Are we talking just about the overt acts with respect
5 to Jane or are we talking about with Annie as well? Because
6 the overt act with respect to Annie is, she's saying she's
7 under the age of 18, but the age of consent there is 16, so --
8 and Kate -- there are a few issues here, so I'll just lay them
9 out.

10 The instruction with Annie is, you know, there's the
11 age of consent issue with Annie. But skipping to Kate, which
12 is No. 4, on line 18, I don't think that should be in there at
13 all because that invites them to base an overt act and convict
14 the defendant based on Kate's testimony, which the Court has
15 already instructed that the jury can't. So, I mean, if they
16 found that this element was satisfied solely with Kate's
17 testimony, that would be an improper conviction. So that
18 shouldn't be included.

19 MR. ROHRBACH: Insofar as we're no longer following
20 the exact text of the indictment, the government would be fine
21 with deleting the overt act relevant to Kate for the reason
22 Mr. Everdell stated.

23 THE COURT: Okay. All right.

24 MR. EVERDELL: All right. So then I think we could
25 probably say with respect to 1 and 2, which we're talking about

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1 Jane, Jane was -- we would say the indictment alleges that Jane
2 was under the age of 17, in both 1 and 2.

3 THE COURT: All right. So let me just --

4 MR. EVERDELL: Yeah.

5 THE COURT: Hang on. So this is Instruction 36,
6 line 11.

7 MR. EVERDELL: Correct.

8 THE COURT: Page 49. I'm going to change "reads" to
9 "alleges," and then line 12, we're going to say "when Jane was
10 under the age of 17," correct?

11 MR. EVERDELL: That's correct.

12 THE COURT: So that's line 12, subbing 17 for 18.

13 And then the next instance of that is line 14.

14 MR. EVERDELL: Correct, your Honor.

15 THE COURT: "When Jane was under the age of 17."

16 MR. EVERDELL: Mm-hmm.

17 THE COURT: And then we get to line 16.

18 MR. EVERDELL: For this one, I would propose that we
19 simply, you know, eliminate the age, if they want to keep this
20 as an overt act and if we think it's proper for the jury to
21 consider Annie's testimony as a potential overt act in
22 furtherance of the conspiracy, even though the goal of the
23 conspiracy is a violation of New York law. So my first
24 objection is that I don't think you can actually consider
25 Annie's testimony as the overt act if what's described there is

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1 not the violation of New York law. So that is our objection to
2 that.

3 MR. ROHRBACH: Well, I think, understanding that
4 Mr. Everdell is I think preserving the earlier objection about
5 Annie's testimony, as far as the suggestion to resolve the
6 redacting issue is just to remove her age from this clause, I
7 think that would be fine and the jury can make its own
8 conclusions about, you know, Annie's age and how it relates to
9 the offense.

10 THE COURT: I understand the broader suggestion, but
11 in light of my earlier conclusion, this third overt act would
12 read, "In or about 1996, Maxwell provided Annie with an
13 unsolicited massage in New Mexico."

14 MR. ROHRBACH: That's my understanding of
15 Mr. Everdell's suggestion, and the government would be fine
16 with that.

17 MR. EVERDELL: And I guess to clarify, Judge, I'm
18 understanding the Court's logic to be that the testimony of
19 Annie about the topless massage can be considered by the jury
20 as evidence of the conspiracy to violate New York law.

21 THE COURT: That's right.

22 MR. EVERDELL: Okay. And understanding that's the
23 Court's logic and ruling, then we would -- but then we would
24 like the redaction. We preserve our objection from before,
25 but -- yes.

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1 THE COURT: And again, noting that that's why I gave
2 the limiting instruction for Annie's testimony, that's why the
3 limiting instruction did differ from the limiting instruction
4 for Kate, because that is the Court's legal conclusion.

5 MR. EVERDELL: Understood, your Honor.

6 THE COURT: So let me just make sure my clerks --
7 yeah. Right. My clerk has adopted the change on line 16,
8 cutting the comma, "when Annie was under the age of 18," comma.

9 Next.

10 MR. EVERDELL: Your Honor, just to confirm, we are
11 also eliminating, with the government's consent, No. 4, which
12 refers to Kate, the overt act referring to Kate.

13 THE COURT: Yes. So eliminating entirely the overt
14 act on line 18 through 20. And then we'll have to change the
15 fifth one to 4 --

16 MR. EVERDELL: Correct, your Honor.

17 THE COURT: -- on line 20. And that one looks like it
18 can stay as is with the age.

19 MR. EVERDELL: Yes, your Honor.

20 THE COURT: Okay.

21 MR. ROHRBACH: Your Honor, I think that that should
22 be -- on line 21, it should still be changed to 17, even
23 though --

24 THE COURT: Because of the --

25 MR. ROHRBACH: Because of the legal count. It's the

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1 conspiracy to violate the offense with the age of consent of
2 17, even though elsewhere Carolyn is charged with an age of
3 consent of 18.

4 THE COURT: I presume you have no objection?

5 MR. EVERDELL: No objection, your Honor.

6 THE COURT: Yes. Let me just think about that.

7 I see. Okay. All right. So Instruction 36, line 21,
8 changing "Carolyn was under the age of 18" to "the age of 17."
9 Yeah, that's right.

10 Okay. Next.

11 MR. EVERDELL: Next one, lines, on that page, 23 to
12 24, and on the following page, lines 1 through 10, it tracks
13 the same changes for the transportation charge.

14 MR. ROHRBACH: That makes sense, I think, your Honor.

15 THE COURT: Okay. Let me see if I can do these.
16 Line 24, changing "age of 18" to "age of 17," and then line 2,
17 changing "age of 18" to 17. Line 4, cutting the clause "when
18 Annie was under the age of 18," and then cutting overt act
19 regarding Kate at No. 4. So that's lines 6 through 8. And
20 then line 19, changing 18 to 17.

21 MR. EVERDELL: Correct, your Honor.

22 MS. STERNHEIM: Judge, you would also want to change
23 the bracketed No. 5 to No. 4.

24 THE COURT: Thank you, Ms. Sternheim. Changing the
25 fifth listed overt act to the fourth listed overt act. Just

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1 one moment.

2 Oh, and we'll again change, on line 23, page 49, the
3 word "reads" to "alleges."

4 MR. EVERDELL: Yes, your Honor.

5 THE COURT: Okay. Next.

6 MR. EVERDELL: Same page, page 50, your Honor,
7 line 18, just going back, these are overt acts with respect to
8 Count Five.

9 THE COURT: Mm-hmm.

10 MR. EVERDELL: The third one, which begins on line 17,
11 between -- oh, yes. "Between in or about 2001 and in or about
12 2004, Epstein's employees, including at times Maxwell, sent
13 Carolyn gifts, including lingerie, etc." I don't think there's
14 any evidence in the record that Maxwell sent any gifts. In
15 fact, I think the FedEx records show that it wasn't Maxwell
16 sending anything. I don't think there's any testimony in the
17 record that Maxwell was sending the gifts, so I think that
18 should be excluded.

19 MR. ROHRBACH: That's fine, your Honor. This is what
20 the grand jury charged, but that is fine, given the state of
21 the record.

22 THE COURT: Okay.

23 MR. ROHRBACH: But to be clear, the government is fine
24 with including the clause -- cutting the clause "including at
25 times Maxwell."

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1 THE COURT: So I think that's the request. So line 18
2 on my page 50, which is the second page of Instruction No. 36,
3 we will cut comma, "including at times Maxwell," comma.

4 MR. ROHRBACH: And in light of that change, your
5 Honor, on line 11 of that page, it should say, "The indictment
6 alleges as follows."

7 THE COURT: Right. On line 11, changing "reads" to
8 "alleges."

9 What's next, Mr. Everdell?

10 MR. EVERDELL: Yes, your Honor. It's on page 51,
11 line 15. I think we've been using "Ms. Maxwell" in this
12 charge, so we'll change on line 15 "the defendant" to
13 "Ms. Maxwell."

14 MR. ROHRBACH: That's fine, your Honor.

15 THE COURT: Okay. So we're on Instruction No. 36.
16 Close to the end of that, the second to last paragraph of that
17 instruction, line 15, changing "the defendant" to
18 "Ms. Maxwell."

19 So one question. We've taken Kate out of the overt
20 acts. Page 51, lines 13 through 16 are no longer seem to make
21 sense.

22 MR. EVERDELL: 51, your Honor?

23 THE COURT: Yeah. Right?

24 MR. EVERDELL: Well, I understand what you're saying
25 with respect to reference to overt acts because she's not in

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1 the overt acts, but I do think it's important to instruct the
2 jury here that they can't convict solely on the basis of Kate's
3 testimony. That I think is --

4 THE COURT: Right, because it's not just about what's
5 in the indictment.

6 MR. EVERDELL: Right.

7 MR. ROHRBACH: That's right, your Honor.

8 THE COURT: Okay.

9 MS. STERNHEIM: Judge, may I just have one moment with
10 Mr. Everdell?

11 THE COURT: Yes, please. Actually, why don't we take
12 a 10-minute break.

13 MR. EVERDELL: Thank you, your Honor.

14 MR. ROHRBACH: Thank you, your Honor.

15 THE LAW CLERK: All rise.

16 (Recess)

17 (Continued on next page)

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1 (Jury not present)

2 THE COURT: All right. Mr. Everdell.

3 MR. EVERDELL: Thank you, your Honor. The next page
4 we have is page 54, instruction 39, the conscious avoidance
5 instruction. Your Honor, on that, the defense objects to this
6 being included, this instruction being included in the charge.

7 I think, as the Court is aware, to include an
8 instruction on conscious avoidance, you have to establish two
9 prongs. First is that the defendant has to assert some lack of
10 specific aspect of knowledge required for conviction. I don't
11 think we're disputing that. But the second prong is that there
12 must be an appropriate factual predicate for the charge. And
13 here, your Honor, the government's theory of the case and the
14 proof that's been elicited through the testimony is that she
15 was an active participant in all aspects of the charges. There
16 has been testimony by all of the witnesses that she was not
17 only participating and facilitating the sexual encounters but
18 that she participated. So we have testimony from Jane that she
19 was involved, that Ms. Maxwell was involved in the group
20 sexualized massages. We had testimony from Annie that the
21 topless massage was done by Ms. Maxwell; she rubbed the top
22 part of her chest during the topless massage. We had testimony
23 from Carolyn that Ms. Maxwell groped her breasts and commented
24 upon her hips. These are all active-participant measures.
25 This is someone that's not consciously avoiding.

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1 The theory they are proceeding on is that she is an
2 active participant. They can't have it both ways. The proof
3 at trial that they have elicited is that she was actively
4 involved. This seems to be here as some sort of backup option.
5 And that's not permissible, your Honor.

6 And I would add that, in a case like this in
7 particular, there is a real concern that the jurors are going
8 to look at this evidence and, given the subject matter of the
9 case, they're going to think, well, she must have known and
10 that's enough for me because this is conduct that really I
11 can't countenance because it involves children. And then the
12 conscious avoidance instruction will give them license to
13 convict the defendant on an improper basis simply because of
14 the nature of the subject matter.

15 So that's an overlay, your Honor. But at the basis,
16 it's that the proof and the theory of the charging in this case
17 and the proof that's gone with it is that she's an active
18 participant o, so we do not think that there is an appropriate
19 factual predicate for this charge.

20 MR. ROHRBACH: A few responses to that, your Honor.
21 First of all, the witnesses testified that she was an active
22 participant. The jury may reject their testimony that she
23 actively participated and can still convict based on her
24 facilitation of the various offenses, including through a
25 conscious avoidance theory.

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1 Second of all, there are particular factual knowledge
2 elements that the defense is contesting. One is her knowledge
3 of the age of the victim. Another is her mens rea with regard
4 to the purposes of travel. And so for those things the jury
5 could reasonably conclude that she had sufficient -- that she
6 was engaging in conscious avoidance as to those particular
7 facts.

8 So, for example, to take the knowledge of age issue,
9 the defense has elicited testimony from several witnesses that
10 the defendant could not, was not aware that the various victims
11 were minors. The jury could conclude that she in fact did have
12 that knowledge. The jury could also conclude that she
13 consciously avoided having that knowledge. Those are both
14 reasonable theories available for the jury for which there is
15 an adequate factual predicate in the record, your Honor.

16 MR. EVERDELL: Your Honor, I think this is inviting
17 the jury, by considering the conscious avoidance charge, to
18 convict on an improper basis that she must have known.

19 THE COURT: Could you just respond to the specific
20 argument, because I think you started by saying there's been no
21 contention as to a lack of knowledge with respect to any aspect
22 of the crimes charged. So the specific contention and the
23 reason I had in my head to include it rather than not include
24 it -- which, for reasons you've indicated, is a case-by-case
25 analysis depending on what factual issues are in play. But on

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1 the question of knowledge as to age, what's your response? Why
2 isn't it applicable with respect to what the defense has put in
3 issue with regard to that?

4 MR. EVERDELL: Yes, your Honor. The witnesses
5 themselves -- sorry, your Honor. One moment.

6 THE COURT: Yes.

7 MR. PAGLIUCA: If you don't mind, your Honor, it's
8 easier for me --

9 THE COURT: Since it's Saturday, I will break my
10 one-lawyer-per-issue rule.

11 MR. PAGLIUCA: I appreciate it. My recollection is
12 the testimony from each of the four witnesses, I will call
13 them, is that they said that they told Ms. Maxwell their age.
14 Carolyn said that she told Ms. Maxwell her age. Jane said she
15 told Ms. Maxwell her age. Similarly, Kate said she told
16 Ms. Maxwell her age.

17 So there is no "I'm not trying to find out what her
18 age is" evidence in this case. The evidence that was
19 elicited -- I think this is, you know, largely through
20 Mr. Alessi. Mr. Alessi said that he only saw two people at the
21 house that he thought were under the age of 18, and that was
22 Ms. Roberts and Jane. I'm trying to remember everybody's
23 names.

24 So that's that testimony.

25 I don't think there's any other testimony in the

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1 record that relates to that topic. So I think that --

2 THE COURT: So the defense has questioned multiple
3 witnesses on their perceptions of individual ages, of relevant
4 individuals' ages, so that puts into question the knowledge
5 element with respect to ages, and it's true there's testimony
6 from each of the alleged victims as to what they told
7 Ms. Maxwell, but of course I don't know whether the jury will
8 accept that testimony or not, or any of those individual pieces
9 of testimony. So it seems like having -- the question here is
10 whether there are specific elements, knowledge elements that
11 are in issue, either because it's what some of the evidence
12 goes to or because the defense has made cross-points or will
13 make arguments regarding that. I mean, I don't suppose it's
14 the case that the defense won't -- will it not argue during
15 closing anything with respect to whether Ms. Maxwell knew of
16 the relevant ages?

17 MS. STERNHEIM: May we have a moment, Judge?

18 THE COURT: Sure.

19 MR. PAGLIUCA: Here's the -- I'm going to try to
20 address -- there's a larger concern. I need to break this into
21 two pieces.

22 THE COURT: OK.

23 MR. PAGLIUCA: One that I view as an evidentiary issue
24 with the indictment and the evidence in the case is that there
25 was testimony about multiple females being at the Palm Beach

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1 residence. And I think the testimony that was elicited by the
2 defense went to what the ages of these multiple females looked
3 like, because the inference is that there are, you know,
4 literally hundreds of under-age women at Epstein's house.

5 And so the testimony from Mr. Alessi was, he only saw
6 two people that he thought looked under age, as opposed to the
7 rest of these people.

8 There was no testimony elicited that, you know,
9 Ms. Maxwell did or didn't know what -- I mean, the contention
10 is that these folks were older. Kate, for example, the
11 contention is she wasn't under age.

12 THE COURT: Yesterday, I think Ms. Dubin was asked how
13 Jane appeared to her.

14 MR. PAGLIUCA: Correct, at the office. But I also
15 think that that's a tension here, is that Jane was older than
16 she is saying. You know, the actual factual dispute is, Jane
17 says she was 14, 15. We disagree. We believe it's later in
18 time.

19 So this is not an avoidance issue. This is a factual
20 dispute as to how old these people actually were. With the
21 exception of Carolyn, who says, you know, I was this age, and
22 we say, we never, you know, had anything to do with Carolyn.
23 That's the factual dispute.

24 And so I think there is a legitimate argument that
25 doesn't relate to conscious avoidance, which is, simply, there

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1 were lots of women there and, you know, there are many -- no
2 one -- no one observed women that they thought were under age.

3 But it's not -- I don't believe there is going to be
4 an argument, Ms. Maxwell is not guilty because she couldn't
5 have known that these four people were whatever age they are.
6 I think the argument is going to be, they weren't that age.
7 That's what I think the defense's position is here, your Honor,
8 not, you know, gee, Mr. Epstein slipped in a couple of
9 teenagers on me here.

10 MR. ROHRBACH: Your Honor, unless the defense is
11 stipulating that Ms. Maxwell knew the ages of these victims,
12 and it's an open issue. The defense has elicited from Larry
13 Visoski, Kimberly Espinosa, the appearance of the victims.
14 They elicited from Carolyn that she was told not to tell -- or
15 told to tell people at the house that she was 17 or 18, when
16 she was younger than that. So the evidence that's been
17 elicited certainly puts the defendant's knowledge of the
18 victims' age at issue.

19 THE COURT: Yes. There are two issues. There's the
20 first question, what age were they. And you contest that. But
21 then there's the second question of, let's assume the jury
22 concludes that they were under the age of 17, then there is the
23 question of Ms. Maxwell's knowledge, and that seems to me to
24 have been put in issue through argument and -- through openings
25 and questions asked on cross.

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1 MR. PAGLIUCA: I think I disagree with that, your
2 Honor. And let's take Carolyn as the example. Carolyn, the
3 government affirmatively elicited that she was told by Virginia
4 to say that she was, you know, whatever age she was told to
5 say. That's, I think, the government's testimony.

6 MR. ROHRBACH: I believe that came out on cross, your
7 Honor. It's on page 1569.

8 MR. PAGLIUCA: If it came out on cross, it was her
9 volunteering that information, I think.

10 But anyway, that doesn't have anything to do with
11 Ms. Maxwell. I mean, that's simply "Virginia told me whatever
12 my name -- whatever the age I'm supposed to say." It's not
13 Ms. Maxwell saying to Virginia, "Say this age."

14 So I just disagree as a factual matter that this has
15 anything to do with conscious avoidance.

16 MR. ROHRBACH: The defense also elicited testimony
17 that the defendant was from -- through Mr. Alessi -- that the
18 defendant was going to legitimate hotels to identify massage
19 therapists. I assume that that's in service of an argument
20 that she didn't know the ages of people coming to the house as
21 massage therapists, and so she could have confused some of them
22 who were under the age of consent with ones who were older than
23 the age of consent. I'm not sure what other evidence that
24 would be in service of.

25 MR. PAGLIUCA: Well, that's in service of Ms. Roberts

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1 being -- that's a factual dispute as well: when did we -- you
2 know, when did Ms. Roberts appear? How old was Ms. Roberts
3 when she appeared and then allegedly recruited other people?
4 That's in service of that argument. It's not in service of
5 some other argument. And that's what that testimony went to,
6 was, you know, we went to Mar-a-Lago, we went to these other
7 spas, Mr. Alessi collected cards from people. I mean, that's
8 what that testimony was. It had nothing to do with Carolyn or
9 the others that relate to Carolyn.

10 MR. ROHRBACH: If the issue is just, how old was
11 Virginia Roberts when she met the defendant, there would be no
12 need for testimony about whether the defendant also went to the
13 Breakers to recruit massage therapists. It would just be, on
14 what date did the encounter happen with Virginia Roberts.

15 THE COURT: All right. I'm going to take a careful
16 look through the transcript to see how and when and to what
17 extent the defense, I think, reasonably -- I could reasonably
18 interpret to put in question Ms. Maxwell's knowledge as to the
19 age of the individuals.

20 Am I hearing you correctly that, in the absence of
21 this instruction, that the defense would make no argument at
22 closing regarding specifically Ms. Maxwell's knowledge of the
23 age of any individuals that the jury might conclude are alleged
24 victims?

25 MR. PAGLIUCA: I would like to consult with the person

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1 who's going to be giving the closing argument.

2 THE COURT: I think she's standing over your shoulder.

3 MS. STERNHEIM: No.

4 MR. PAGLIUCA: No.

5 MS. STERNHEIM: Surprise. It's not me.

6 MR. PAGLIUCA: I can give the Court that answer before
7 we leave today, if that's all right with the Court.

8 MR. ROHRBACH: If I may just say, your Honor, I'm not
9 even sure that these things can be pulled apart. An argument
10 that these people were older is so intertwined with an argument
11 that she thought these people were older that, even if they
12 didn't say the words about that in their closing, I think the
13 jury would assume that, absent some more affirmative
14 stipulation, so the government would have to rebut it. A
15 conscious avoidance theory is an appropriate way to do so.

16 THE COURT: Yes. It's a fair point. And I'm going to
17 look carefully at relevant portions of the transcript, but I do
18 think it is sufficiently in issue that it's appropriate to give
19 the instruction. I would consider, as part of my calculus in
20 coming to a final resolution, if the defense were to indicate
21 it wouldn't specifically make that argument. But --

22 MS. STERNHEIM: We'll get you that answer as soon as
23 we can. It will be following the break, I think.

24 MR. ROHRBACH: Your Honor, the other -- we've also
25 articulated a theory that there are flight records showing the

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1 defendant traveling with some of the minor victims. I assume
2 the defendant is going to say that she didn't know the purposes
3 of the trips. To the extent the purpose was sexual abuse, the
4 government would argue that at a minimum this she did know, if
5 she didn't she consciously avoided knowing, why Jeffrey Epstein
6 was traveling repeatedly with these minors.

7 THE COURT: The other point is, from the openings, I
8 don't know if it will be a theme of the closing, but the
9 distancing of Ms. Maxwell from Mr. Epstein and what he did was
10 clearly a theme of the opening, and so that implicates
11 knowledge throughout the counts.

12 So my strong inclination is that it's appropriate
13 here. That's my conclusion. That's my conclusion. I'm going
14 to look back through relevant portions of testimony on the age
15 issue, but I think even the age issue -- well, not the age
16 issue. Knowledge of age. Specific arguments as to knowledge
17 of age aside, knowledge of age is intertwined with arguments
18 regarding age. And in any event, there are, as a result of the
19 opening, questions about Ms. Maxwell's knowledge of what
20 Mr. Epstein is alleged to have been doing that I think it's
21 sort of a standard instance of the applicability of a conscious
22 avoidance instruction.

23 So my conclusion is to include it.

24 Next.

25 MR. EVERDELL: Next, your Honor -- let me make sure.

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1 I believe the next one is at page 61.

2 THE COURT: Did you have something before that?

3 MR. ROHRBACH: No, page 69.

4 THE COURT: OK. Page 61.

5 I have something before that. There is a pronoun on
6 page 60, line 5, "he" should be replaced with "she."

7 MR. EVERDELL: That's fine, your Honor.

8 MR. ROHRBACH: Yes, your Honor.

9 THE COURT: And what page was it, Mr. Everdell?

10 MR. EVERDELL: The next page is 61, your Honor.

11 That's instruction 44, credibility of witnesses.

12 THE COURT: OK.

13 MR. EVERDELL: Your Honor, we would just propose that
14 there were a number of witnesses who, it came out, had felony
15 convictions, and there is a Sand instruction on this. It's
16 instruction 7-12. And we would ask that it be included, at
17 least in part, in the credibility of witnesses instruction. I
18 can read that to you, your Honor, if you like.

19 THE COURT: I gather this was not an original
20 proposal.

21 MR. EVERDELL: No. We didn't know if it would come
22 in.

23 THE COURT: Oops. All right. I'll take your -- my
24 clerks will submit language, but go ahead.

25 MR. EVERDELL: Sure. I have Sand in front of me, and

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1 I can read the full instruction.

2 THE COURT: And the proposal is to include it where?

3 MR. EVERDELL: In instruction 44, in the credibility
4 of witnesses.

5 THE COURT: Right. Where?

6 MR. EVERDELL: I think it could be either after the
7 second paragraph, before the third paragraph, or after the
8 third paragraph, which goes on to the next page before the
9 first full paragraph on that page.

10 THE COURT: OK.

11 MR. EVERDELL: I'm happy to read it if you like, or
12 you can just -- it's up to the Court.

13 THE COURT: I don't have it yet. So go ahead.

14 MR. EVERDELL: OK. So the way it reads in Sand is,
15 "You have heard the testimony of a witness who was previously
16 convicted of a crime punishable by more than one year in jail.
17 This prior conviction was put into evidence for you to consider
18 in evaluating the witness's credibility. You may consider that
19 fact -- you may consider the fact that the witness who
20 testified is a convicted felon in deciding how much of his" --
21 I think maybe "his or her testimony to accept and what weight
22 if any it should be given."

23 MR. ROHRBACH: Your Honor, we're not familiar with
24 this instruction being given in this district, and obviously
25 witnesses with felony convictions testify regularly. The

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1 commentary as it stands suggests that the point of this
2 instruction is just to tell the jury why this was -- the felony
3 conviction was even put before them in the first place. And I
4 don't think a jury is going to be confused or misled about why
5 that testimony was offered. So I don't think there is a need
6 for this sort of instruction.

7 THE COURT: Do you have any examples of it being used?

8 MR. EVERDELL: Your Honor, I don't have at my
9 fingertips. I can try to find some if there are.

10 THE COURT: This is my standard credibility
11 instruction. Certainly given in multiple trials in which
12 felony convictions came in. I don't think I've ever given it
13 or been asked to give it.

14 MR. EVERDELL: Your Honor, I would point out, I think
15 in a lot of trials, maybe in the ones you've done before, there
16 was probably an instruction about cooperating witnesses which
17 builds in this language, and obviously you don't have one here,
18 so it's often included in the charge in a separate instruction.

19 THE COURT: Well, this is a new request. I'll take a
20 look. We'll look at it. And when I send you the redline
21 you'll either see it or not.

22 MR. EVERDELL: In the meantime, your Honor, I'll try
23 to find other examples if I can.

24 THE COURT: OK. Looks like I have given it as a
25 separate instruction, testimony of felons. "You've heard the

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1 testimony of witnesses who were previously convicted of crimes
2 punishable by more than one year in jail. This prior
3 conviction was put into evidence for you to consider in
4 evaluating the witness's credibility. You may consider the
5 fact that the witness who testified was a convicted felon in
6 deciding how much of his testimony to accept and what weight if
7 any it should be given." Looks like I gave that in my -- in
8 the *United States v. Berry*.

9 MR. EVERDELL: I think we've been using that as a
10 model in this charge, your Honor, so we would request a similar
11 instruction here.

12 THE COURT: I would add it, as I did in that last
13 case, as a standalone instruction.

14 Mr. Rohrbach.

15 MR. ROHRBACH: Your Honor, this is the first we've
16 hoard of this proposal. So if we could have a few hours after
17 the charge conference to give it some thought. We can file a
18 letter saying either, we agree, or, if we have objections to
19 it, articulating those.

20 THE COURT: I think that's fair, and I will look too
21 since it's a new suggestion. I think my proposal would be to
22 just do it as a standalone instruction at, maybe what would be
23 45-A?

24 MR. EVERDELL: That's fine, your Honor.

25 THE COURT: Between 45 and '6.

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1 So that's the proposal. And when would you like to
2 put in a letter?

3 MR. ROHRBACH: Depends on what time we finish.

4 MR. EVERDELL: First thing, your Honor.

5 MR. ROHRBACH: If we finish by noon, by 2 or 3?

6 THE COURT: OK. Let's do 2 o'clock.

7 MR. ROHRBACH: OK.

8 THE COURT: Thank you.

9 Next.

10 MR. EVERDELL: Next, your Honor, is page 68,
11 instruction no. 50, the uncalled witnesses charge. The request
12 here is that this not be included, and I think the reason being
13 that, in this case, it isn't really accurately summarizing the
14 state of play, because, you know, for example, there were
15 witnesses who took their Fifth Amendment rights and refused to
16 testify as defense witnesses because they invoked their Fifth
17 Amendment rights. The government does have the option of
18 giving those witnesses immunity to testify. And so they
19 actually control, more than we do, whether or not a witness can
20 appear --

21 THE COURT: To be clear, that didn't happen. They
22 didn't call that witness.

23 MR. EVERDELL: We had a witness who invoked their
24 Fifth Amendment rights or had written the Court that they
25 planned to invoke, and that we called and was under subpoena

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1 that we intended to call as a witness.

2 THE COURT: There was a lawyer letter indicating that
3 they had received a subpoena and they intended to invoke. I
4 asked many, many times if there was an application with respect
5 to it. I never got one. So I'm not sure how to think of that.
6 It's certainly true that, if someone invokes, the defense can't
7 offer immunity the way that the government can. That's true in
8 every case. This charge is quite standard, though standardly
9 objected to, but I don't know that I see anything in this case
10 that would distinguish its application based on what you've
11 just indicated.

12 MR. EVERDELL: In addition to what I had just
13 indicated, just for purpose of completeness, there are a number
14 of witnesses who, based on the witness testimony in this case,
15 there would be people who the government -- who we normally may
16 have considered calling as a witness but who the government
17 clearly could have charged, criminally, based on the testimony
18 we heard. And I won't name names if we don't want to do that.
19 But I think we probably know who we're talking about here. And
20 that is, you know, had we tried to call that witness or those
21 witnesses, they undoubtedly would have invoked their Fifth
22 Amendment rights. In fact, as some of them -- one of them was
23 not called by the government and would have had to have been
24 given statutory immunity or granted immunity to be able to
25 testify, by the government, if they had decided to call them.

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1 So there is more than just the one witness who indicated that
2 she was going to invoke had the defense called her. There were
3 other co-conspirators who the government chose not to call, not
4 to immunize, and we couldn't possibly call in our defense
5 without -- because we can't give any immunity ourselves.

6 MR. ROHRBACH: Your Honor, this is true in basically
7 every conspiracy case and every gang case that is prosecuted in
8 this district. There are unindicted co-conspirators. Yet this
9 instruction is given and is the run-of-the-mill instruction, as
10 the Court said, in cases in this district.

11 MR. EVERDELL: Your Honor, if the Court is inclined to
12 give the instruction, I can propose an alternative.

13 THE COURT: I will take an alternative.

14 MR. EVERDELL: If we can just eliminate the language
15 in the title of the charge that says "equally available to both
16 sides" and just have "the uncalled witnesses."

17 I believe there's also language that says "equal
18 opportunity."

19 THE COURT: Or lack of opportunity.

20 MR. EVERDELL: Yes.

21 MR. ROHRBACH: This is the uncalled witness
22 instruction, your Honor. This is the instruction given,
23 suggested by Sand and given by this Court. I have five
24 examples right here where the Court has given this instruction.

25 THE COURT: As I say, it's always given, always

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1 objected to.

2 So here's just a slight change. Line 4. "Each party
3 had an opportunity to call any of these witnesses."

4 MR. EVERDELL: We would accept that, your Honor.

5 THE COURT: It's a similar meaning. It's not quite
6 equal. I'll adopt that. "Each party had an opportunity to
7 call any of the witnesses."

8 MR. ROHRBACH: If your Honor is thinking of that
9 change, we would ask to just include that in our letter later.

10 THE COURT: That's fine. So the proposal would be
11 that, line 1, cut "equally available to both sides" from the
12 heading, and then, line 4, cut "equal opportunity or lack of
13 opportunity" and change to "an opportunity."

14 MR. EVERDELL: Yes, your Honor.

15 THE COURT: I think it's clearly true, Mr. Rohrbach,
16 this is standard language, and I've given it a slightly,
17 slightly altered meaning, to take emphasis off of "equal
18 opportunity." So I think it still captures the meaning of the
19 charge.

20 MR. ROHRBACH: I just -- we will think about it and
21 include it in our letter. But just to preview for the Court,
22 part of our concern is that the most obvious witness who was
23 available to both sides and who we expect the defense to
24 comment on is Virginia Roberts, who was described as a victim
25 but did not testify and she was fully available to the

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1 defendants. They did not call her. To the extent the main
2 issue here is Virginia Roberts' testimony, that she was equally
3 available to both sides.

4 MR. EVERDELL: It's not Virginia Roberts that I'm
5 thinking of, your Honor. I'm happy to say the name. It's
6 Sarah Kellen.

7 THE COURT: OK. I mean, suppose -- look, as I said,
8 I've only slightly changed the meaning. It's the same meaning
9 but it takes emphasis off of "equal." I don't know what the
10 defense is going to focus on in its closings, how much of the
11 focus will be the absence of individuals.

12 MR. EVERDELL: I expect we'll be talking about the
13 absence of individuals, your Honor.

14 THE COURT: All right. I'll hear from you in your
15 letter. I'm keeping the charge. And it will either be the
16 standard charge or the very slight modification I've proposed.

17 Next.

18 MR. EVERDELL: Your Honor, page 69.

19 THE COURT: OK.

20 MR. EVERDELL: That's the particular investigative
21 techniques charge. We were prohibited from the Court's rulings
22 and from eliciting evidence and from arguing this point about
23 particular investigative techniques, and so we --

24 THE COURT: Well, to be clear, not on cross with
25 respect to witnesses called. But I don't need to repeat my

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1 ruling. But the ruling is what the ruling is. What's the
2 request?

3 MR. EVERDELL: The request is to eliminate the charge
4 on this point because we couldn't -- we weren't supposed to,
5 and nor did -- I think we tried to abide by the Court's ruling
6 to not talk about particular investigative techniques or elicit
7 evidence on that point. And so if we're not going to be
8 permitted to elicit or argue that point to the jury, then it
9 doesn't seem like they need to be instructed on that point.

10 MR. ROHRBACH: This is a legally correct instruction.
11 As the Court has ruled many times now in this case, particular
12 investigative techniques are not required. The defense made
13 that point, as they could, on cross through the case, and I
14 assume it will be, as they can in the defense's summation. And
15 this is a correct statement of the law on which the jury should
16 be instructed.

17 MR. EVERDELL: Sand has filled three volumes of
18 correct statements on law, your Honor. That doesn't mean that
19 they get into a jury charge.

20 THE COURT: I think I've always included this charge,
21 so it's not just a rarely invoked Sand charge. I mean, as you
22 talked about yesterday, there were questions you were going
23 to -- ask.

24 MR. EVERDELL: Special Agent Young.

25 THE COURT: -- Young, thank you -- that either -- some

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1 of which were asked of the relevant investigative agents or
2 arguments that could be made based on the absence of evidence
3 in the record and the like. And my ruling was what it was,
4 which didn't foreclose entirely the opportunity with respect to
5 cross-examination and the like. I suspect this will be part of
6 the defense's arguments in closing, so it's appropriate to
7 include the charge.

8 MR. EVERDELL: Understood.

9 Just as long as we're allowed to argue, are permitted
10 to argue in closing about absence of evidence consistent with
11 the Court's ruling.

12 THE COURT: Absolutely, so long as the inference is
13 available in the record.

14 And I'll just pause, because I made a note to say
15 this. I have a decent memory, and my afternoon and tomorrow
16 will be spent reviewing much of the trial testimony. I don't
17 want objections during closings, but that requires -- I gather
18 it's Ms. Menninger that's doing the closing and Ms. Moe, who
19 are absent today. So for both sides, any inference argued had
20 better be from the transcript or the documents, and any
21 objections should be rare and not based on your interpretation
22 of the available evidence but the fact of the available
23 evidence. We should get through closings without objections.

24 MR. EVERDELL: Understood, your Honor.

25 MR. ROHRBACH: Understood on our part, your Honor.

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1 THE COURT: Thank you.

2 MR. ROHRBACH: This is the instruction where the
3 government also has a request, unless Mr. Everdell has anything
4 else on 69.

5 MR. EVERDELL: I do not.

6 MR. ROHRBACH: Here the government would request that
7 the Court include the traditional "government is not on trial"
8 sentence.

9 THE COURT: That I didn't permit.

10 MR. ROHRBACH: I saw that, your Honor. We just wanted
11 to raise it with your Honor again. Our view is that it's
12 something the defense put in issue in their -- came very close
13 to the line of putting in issue in their opening and has been a
14 theme of the defense case so far, and we assume they will come
15 close to the line but hopefully not cross the line in their
16 defense summation. And in light of that, it is an instruction
17 that the circuit has said is appropriate. And so we think, in
18 anticipation of what we expect in the defense's summation, we
19 think it is an appropriate inclusion in this instruction.

20 MR. EVERDELL: Your Honor, I don't think there's any
21 need to anticipate. If there's an issue about what we say,
22 we're going to be very careful about the Court's ruling. We're
23 going to do our level best to make sure we stay within the four
24 corners of the ruling. But I think this instruction as written
25 is appropriate. I suppose the government, if they want to

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1 raise something before the charge is given based on the
2 closing, they can.

3 THE COURT: I think this is what I typically use, so
4 we'll stick with that. And obviously closings will not cross
5 the line as to what I've forbidden, or that may become
6 necessary.

7 MR. EVERDELL: Yes, your Honor.

8 MR. ROHRBACH: Understood, your Honor. I think that,
9 just to sort of complete the point, the government's particular
10 concern is the argument about the empty chair and the
11 government's motivations for this prosecution, which is
12 somewhat different than the particular investigative techniques
13 point that's elsewhere in this instruction, which is why we
14 thought the additional sentence is necessary.

15 THE COURT: I didn't permit and there will be no
16 argument about the government's motivation.

17 MR. EVERDELL: That's clear, your Honor.

18 MR. ROHRBACH: Thank you, your Honor.

19 MR. EVERDELL: All right. Your Honor, we're all set.
20 Page 73.

21 THE COURT: Anything before that?

22 MR. ROHRBACH: No. That was the last edit from the
23 government, actually.

24 THE COURT: OK. 73.

25 MR. EVERDELL: This is the preparation of witnesses

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1 instruction, instruction 55. The government can correct me if
2 I'm wrong. I don't think we had any testimony about preparing
3 witnesses, so I don't know if this instruction is necessary.

4 THE COURT: No. There was. For sure.

5 MR. EVERDELL: OK. Maybe I'm mistaken about that.

6 THE COURT: "How many times did you meet with the
7 government?"

8 MR. EVERDELL: OK.

9 THE COURT: For example. Maybe every, every --

10 MR. EVERDELL: OK. I stand corrected.

11 THE COURT: Other than that, you've got it.

12 MR. EVERDELL: Other than that, OK.

13 All right. I think that's all we have, apart from the
14 verdict sheet.

15 THE COURT: OK. Anything else, Mr. Rohrbach?

16 MR. ROHRBACH: No. Thank you, your Honor.

17 THE COURT: OK. The verdict sheet.

18 MR. EVERDELL: The verdict sheet, your Honor, is just
19 tracking some of the changes.

20 THE COURT: Wait, wait. Sorry. Yes. Oh, I had two
21 more that we caught this morning. Page 78, line 13, it says
22 "solely be," but it should be "solely by."

23 MR. EVERDELL: Sorry, what line is that, your Honor?

24 THE COURT: 13.

25 MR. EVERDELL: OK.

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1 THE COURT: And then there was one more heading, that
2 had that errant "Two" in it. Oh, page 52, instruction 37, that
3 heading also has the word "Two" in it for some reason.

4 MR. EVERDELL: Yes, your.

5 THE COURT: Verdict sheet.

6 MR. EVERDELL: Your Honor, the edits here are just to
7 track changes we've adopted elsewhere. So as to Count One,
8 "conspiracy to entice an individual under the age of 17 to
9 travel."

10 MR. ROHRBACH: That's fine, your Honor.

11 THE COURT: OK. "An individual." Right. All right.
12 So Count One, we'll adopt that and add "under the age of 17."

13 MR. ROHRBACH: This is actually in Count One also,
14 should be "individuals," plural, I think, in light of the
15 changes we've made?

16 THE COURT: Right. It's a conspiracy count.

17 MR. ROHRBACH: Yes, your Honor.

18 THE COURT: OK, Mr. Everdell.

19 MR. EVERDELL: Count Two, the same thing.

20 THE COURT: Sorry. I just wanted your adoption,
21 "conspiracy to entice individuals under the age."

22 MR. EVERDELL: Yes, your Honor.

23 THE COURT: So we'll cut "an" and make it plural.

24 MR. EVERDELL: Yes, your Honor.

25 THE COURT: Go ahead.

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1 MR. EVERDELL: Count Two, "enticement of an individual
2 under the age of 17." And then we would propose "(Jane only),"
3 to add the word "only," your Honor.

4 THE COURT: So adding, after "an individual," "under
5 the age of 17," adding in the parentheses, after the word
6 "Jane," "only."

7 MR. EVERDELL: Correct.

8 THE COURT: OK.

9 MR. EVERDELL: Count Three, to transport and then take
10 out the word "a minor," this would be, I guess, "individuals
11 under the age of 17."

12 MR. ROHRBACH: Agreed, your Honor.

13 THE COURT: OK. I will make that change to
14 "individuals under the age of 17," taking out "a minor."

15 MR. EVERDELL: And then Count Four, "transportation of
16 an individual," adding "under the age of 17" and adding the
17 word "only" after "Jane."

18 THE COURT: OK.

19 MR. ROHRBACH: That's fine, your Honor.

20 THE COURT: All right. Make that change, adding
21 "under the age of 17" and then adding "only" after the word
22 "Jane."

23 MR. EVERDELL: Let's just skip over Count Five for a
24 second. Count Six.

25 THE COURT: "Only."

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1 MR. EVERDELL: Carolyn only, and it would say "sex
2 trafficking of."

3 THE COURT: "An individual."

4 MR. EVERDELL: "Under the age of 18."

5 MR. ROHRBACH: That's fine, your Honor.

6 THE COURT: Taking out "a minor," adding "an
7 individual under the age of 18," and then adding "only" after
8 "Carolyn."

9 MR. EVERDELL: Correct, your Honor.

10 THE COURT: OK.

11 MR. EVERDELL: Moving back to Count Five, it's a
12 little cumbersome, I understand, the way the language is. But
13 it would say "sex trafficking conspiracy of individuals under
14 the age of 18."

15 THE COURT: OK. Mr. Rohrbach.

16 MR. ROHRBACH: We think it's a little unclear to say
17 "conspiracy to commit sex trafficking of individuals under the
18 age of 18"?

19 MR. EVERDELL: That's fine.

20 THE COURT: So we'll change Count Five to "conspiracy
21 to commit sex" -- how do you want to say it?

22 MR. EVERDELL: "conspiracy to commit sex trafficking
23 of individuals under the age of 18."

24 THE COURT: 17.

25 MR. ROHRBACH: 18 for this.

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1 THE COURT: Sorry. 18, Count Five.

2 All right. So we'll make that change.

3 MR. ROHRBACH: The government has just one edit, if
4 Mr. Everdell is finished on the other.

5 MR. EVERDELL: Which one?

6 MR. ROHRBACH: Which is on the top of the verdict
7 sheet. After "please indicate your verdict with a checkmark,"
8 it's a "T" in parentheses.

9 THE COURT: That's so odd. Yes. We'll convert that
10 to a checkmark.

11 OK. That's it from the verdict sheet?

12 MR. ROHRBACH: Nothing from the government.

13 MR. EVERDELL: Nothing from the defense, your Honor.

14 MS. STERNHEIM: Judge, I have something unrelated to
15 the charge in the verdict sheet.

16 THE COURT: All right. Give me one moment just to go
17 through my to do list. So I have two open issues that I'll
18 hear from the government by letter by 2. Once I have that,
19 I'll make my conclusions with respect to those. We'll send the
20 parties a redline version of the changes made and a clean
21 version, which will be the final version, unless -- I'll set a
22 time when I send it to you, by a certain time. You indicate
23 any errors that were implemented in the implementation of the
24 changes. Otherwise that will be final. Same for the verdict
25 sheet.

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1 Ms. Sternheim, go ahead.

2 MS. STERNHEIM: Thank you, Judge. I don't know if the
3 Court has found out if any of the jurors are having issues
4 about staying later on Monday.

5 THE COURT: They were all fine.

6 MS. STERNHEIM: OK, because I just wanted to say that
7 we are motivated, and I think the government would join me, in
8 having us complete all of the closing arguments and the charge
9 on Monday.

10 THE COURT: Yes. I think we can do that.

11 MS. COMEY: Yes, your Honor.

12 THE COURT: Which gets to my next to-do item, which
13 is -- I realize we don't have the relevant people, but I think
14 Ms. Moe had indicated two to three hours.

15 MS. COMEY: That's right, your Honor.

16 THE COURT: Two sounds about right to me.

17 MS. STERNHEIM: That's even better to us.

18 THE COURT: I mean, length of trial, the complexity of
19 the charges, this should be a two-hour closing.

20 MS. COMEY: Your Honor, understood. We did, I will
21 note, streamline our case significantly, and there were a
22 number of exhibits that were not published to the jury, and I
23 think we were explicitly told, that's for closing, when we
24 wanted to do it with witnesses. So it's a little cumbersome,
25 because there is more work to be done connecting up a number of

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1 paper exhibits that we were not able to show to the jury. So
2 that's what might push it back two hours. So I would ask for
3 the Court's indulgence to two and a half hours, in light of the
4 fact that we really didn't get to show the jury all of the
5 exhibits, and it's going to take more time to walk them through
6 those exhibits that they haven't even seen.

7 THE COURT: All right. So two and a half, and two and
8 a half.

9 MS. STERNHEIM: They should five minutes for rebuttal.
10 And it will be fine.

11 THE COURT: Can you do 30 for the rebuttal?

12 MS. COMEY: I would ask for the Court's indulgence for
13 a little more than 30 if I may, just to have a little bit of a
14 cushion.

15 THE COURT: All right. 35.

16 MS. COMEY: Thank you, your Honor.

17 THE COURT: So we're going to start at 9. We're going
18 to do a very short midmorning break. We're going to do a short
19 lunch. The jurors' lunch will be here, I think, 20 minutes.
20 Let's say 30 minutes for you all to have lunch too. Given
21 that, we should get through closings and the charge tomorrow
22 and potentially they can start deliberating, depending on what
23 time it is. But I agree --

24 MR. EVERDELL: Your Honor, just on the issue of
25 timing, thinking it through, so we start at 9, we start right

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1 at 9 and the government has a two and a half hour closing, that
2 puts us at 11:30, roughly, give or take. It would be the
3 defense's request we don't break the defense closing through
4 lunch. So I don't know how that impacts the schedule.

5 THE COURT: We do the best we can, is what I always
6 say.

7 MR. EVERDELL: Understood.

8 THE COURT: We'll see where we are. We'll adjust and
9 try to not break anything.

10 I'll have lunch here early, so that that's a
11 possibility.

12 MR. EVERDELL: Thank you, your Honor.

13 THE COURT: But, yes, I agree. And, you know, the
14 charge, I think it was about 80 pages. My favorite part of the
15 job is reading the charge.

16 MS. STERNHEIM: And ours to listen.

17 THE COURT: Nothing better. But I would guess an hour
18 or so, we should get there.

19 OK. And the other thing I have on my to-do list, I
20 always have the parties agree on the exhibits that are going
21 back to the jury, and I get that on the record, so forgive me
22 that I'm not sure exactly where we are under COVID protocols.
23 There was a time under COVID protocols where only electronic
24 exhibits went back. I think, and Ms. Williams isn't here to
25 tell me what's what, but I think now paper can go. Why don't

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1 you all confer. Go ahead, Ms. Sternheim.

2 MS. STERNHEIM: I'm going to wait until you finish and
3 then I'll --

4 THE COURT: What I'd like to do, when we meet, before
5 the jury comes in tomorrow -- not tomorrow -- Monday, as much
6 as I'd like to do it tomorrow. We'll meet at 8:30 on Monday,
7 and I would like to get on the record the parties' agreement as
8 to exactly what's going back to the jury, and Ms. Williams will
9 give you our -- actually, we'll try to get that to you today or
10 tomorrow -- list of what we have as admitted exhibits, and you
11 can agree or tell us if we've got anything wrong. And I'll get
12 your agreement on that list of admitted exhibits as well.

13 Go ahead.

14 MS. STERNHEIM: Thank you, Judge. My recommendation
15 for efficiency purposes would be for the parties to agree on
16 what portions of the transcript should be redacted in case the
17 jury wants it, so that we don't have to do readback and then
18 make copies of the transcript could go in.

19 MS. COMEY: Agreed, your Honor.

20 THE COURT: That is understood. Absolutely. So
21 you'll have that ready by Monday.

22 MS. STERNHEIM: Yes.

23 THE COURT: Great. Thank you.

24 Yes. And it is my practice to get that agreement and
25 then send the paper back.

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1 MS. STERNHEIM: We'll work on that. I know that the
2 court reporters have often been very helpful in helping us do
3 that as well.

4 THE COURT: All right. Anything else?

5 MR. ROHRBACH: On that point, your Honor, the parties
6 are conferring on the redacted exhibits, and I anticipate we'll
7 get a letter probably later today if not hopefully later today
8 about exactly what the proposed redacted exhibits are, so
9 that's finished in advance of the closing.

10 MR. EVERDELL: We're working on that.

11 THE COURT: OK. And have you worked out logistics on
12 closings for the sealed material?

13 MS. COMEY: Yes, your Honor. I believe the plan is to
14 do what we did with the video exhibits, which is to have the
15 presentation from the parties up on the jurors' screens but not
16 displayed on the public screens or in the overflow room. And
17 we've also been working to get podium turned so that it's
18 facing the jurors.

19 And then I think there will be paper copies of the
20 presentations of the parties, for counsel who have screens that
21 are facing the gallery.

22 THE COURT: Right. So there will be no -- orally,
23 you're not going to refer to any real names of witnesses who
24 testified by pseudonym, etc. That will at times be shown to
25 the jury during the presentation, but that won't be publicly

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1 hone.

2 MS. COMEY: That's exactly right, your Honor. And to
3 the extent there are images that were sealed, those would also
4 not be shown to the public but would be shown to the jury.

5 THE COURT: OK. Understood. Any questions about
6 that?

7 MR. EVERDELL: No, your Honor.

8 THE COURT: Any demonstratives of any kind planned,
9 other than --

10 MS. COMEY: The PowerPoint presentation, your Honor,
11 but --

12 THE COURT: -- the PowerPoint, that does anything
13 other than show admitted evidence or testimony?

14 MS. COMEY: There may be some portions of the charge,
15 once it's finalized. It's possible that there would be text of
16 the final charge on the slides. But I don't think there would
17 be anything beyond that, or excerpts of the transcript from the
18 trial.

19 THE COURT: Right.

20 MR. EVERDELL: Actually on that point I didn't know
21 what the Court's practice was on that, whether the Court allows
22 the final charge excerpts to be used in the closing or whether
23 we do something else.

24 THE COURT: I do allow it.

25 MR. EVERDELL: OK.

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1 THE COURT: But I'll hear if anybody has an objection.

2 MS. COMEY: No, your Honor.

3 MR. EVERDELL: No, your Honor.

4 THE COURT: OK. Anything else on that?

5 MR. EVERDELL: No. I think we just have to work a few
6 redactions out.

7 THE COURT: And I think we have one more minor edit.

8 It was just a minor thing, but we can't find it.

9 Let me just note, I want to thank the court staff who
10 worked on Saturday to make this possible, and my thanks to
11 counsel and the parties for doing it. I appreciate everybody's
12 willingness to work on a Saturday. Thank you.

13 Page 51, line 13, missing the word "at." "The
14 government has to prove that at least one of the overt acts."
15 So inserting "at."

16 MR. EVERDELL: No objection, your Honor.

17 MR. ROHRBACH: Yes.

18 THE COURT: All right. We'll make that change.

19 With that, thank you, everyone. I will see you Monday
20 at 8:30.

21 (Adjourned to 8:30 a.m., December 20, 2021)

22

23

24

25